

**AGENDA
CITY COMMISSION MEETING
VENETIAN CENTER, 1 DOZIER COURT
MONDAY, MAY 24, 2021 5:30 PM**

1. CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

2. PROCLAMATIONS:

A. None

3. PRESENTATIONS:

A. None

4. PUBLIC COMMENTS:

This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Issues brought up will not be discussed in detail at this meeting. Issues will either be referred to the proper staff or will be scheduled for consideration at a future City Commission Meeting. Comments are limited to three minutes.

5. CONSENT AGENDA:

Routine items are placed on the Consent Agenda to expedite the meeting. If the Commission/Staff wish to discuss any item, the procedure is as follows: (1) pull the item(s) from the Consent Agenda; (2) vote on remaining items with one roll call vote, (3) discuss each pulled item and vote by roll call

A. CITY COMMISSION MEETING MINUTES:

1. Regular meeting held May 10, 2021

B. PURCHASING ITEMS:

1. Resolution of the City Commission of the City of Leesburg, Florida

authorizing the Mayor and City Clerk to execute a construction services agreement with Marion Rock, Inc. for the construction of a reuse water main extension along County Road 48 from Legacy to Spring Creek development for an amount of \$122,000.00; and providing an effective date.

2. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a construction services agreement with U.S. Water Services Corporation for the construction of a new gravity sewer main, allowing the abandonment of sewer mains that currently run under a private building between Pamela and Hill Streets for an amount of \$191,635.10; and providing an effective date.

C. RESOLUTIONS:

1. Resolution of the City Commission of the City of Leesburg, Florida authorizing and directing the Mayor and City Clerk to execute an agreement for One (1) School Resource Officer (SRO) position/service to be provided to Lake County School Board – Leesburg High School, for the summer term of 2021; and providing an effective date.
2. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute Agreement #AP822 with the Florida Department of Transportation (FDOT) for participation in the State Highway Lighting, Maintenance, and Compensation Program; and providing an effective date.

**6. PUBLIC HEARINGS AND NON-ROUTINE ITEMS:
COMPREHENSIVE PLAN INFORMATION SIGN-UP SHEET (YELLOW)
AVAILABLE**

A. SECOND READING OF ORDINANCES

1. An Ordinance of the City of Leesburg, Florida, establishing the Tara Oaks Community Development District pursuant to Chapter 190, Florida Statutes; providing for authority and power of the district; providing for the Board of Supervisors of the district; providing for the district budget; providing for functions of the district; providing for miscellaneous provisions; and providing an effective date. (Tara Oaks CDD-1)
2. An Ordinance amending the Comprehensive Plan of the City of Leesburg, Florida, changing the Future Land Use designation of certain property containing approximately 4.87 acres, from Institutional to Low Density Residential, for a property generally located west of Lee Street, south of

West Line Street and east of Perkins Street, as legally described in Section 26, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date. (*Lee Street Village FLUM*)

- 3. An Ordinance of the City of Leesburg, Florida, amending the development conditions on a SPUD (Small Planned Unit Development) zoning on approximately 4.87 acres, to allow for residential development for a property generally located west of Lee Street, south of West Line Street, and east of Perkins Street, as legally described in Section 26, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date. (*Lee Street Village SPUD*)**
- 4. An Ordinance of the City of Leesburg, Florida, amending the City of Leesburg Comprehensive Plan to establish criteria for a Historic District Density Bonus, based on certain criteria, establishing appropriate policies to ensure compatibility, providing for conflict with other ordinances, providing a savings clause; and providing an effective date. (*CPTA Historic District Density Bonus*)**
- 5. An Ordinance of the City of Leesburg, Florida, amending the City of Leesburg Land Development Regulations by establishing criteria for density bonuses in Article IV – Section 25-292 *Supplemental District Requirements*; providing for conflict with other ordinances, providing a savings clause; and providing an effective date. (Historic District Density Bonus Chapter 25)**
- 6. An Ordinance of the City of Leesburg, Florida, amending the mixed-use PUD (Planned Unit Development) on approximately 640 +/- acres to extend the timeframe of the development for a property generally located north of Poe Road at the intersection of County Road 44, west of Radio Road and extending northwest to Haines Creek, as legally described in Sections 3, 4, and 5, Township 19 South, Range 25 East, Lake County, Florida; and providing an effective date. (Orange Bend)**
- 7. An Ordinance of the City of Leesburg, Florida, amending Chapter 17, Pensions and Retirement, Article IV, Police Officers' Retirement Fund, of the Code of Ordinances of the City of Leesburg; amending Section 1, Definitions; providing for codification; providing for severability of provisions; repealing all Ordinances in conflict herewith; and providing an effective date.**

B. FIRST READING OF ORDINANCES

- 1. None**

C. NON-ROUTINE ITEMS

1. None

7. INFORMATIONAL REPORTS:

The following reports are provided to the Commission in accordance with the Charter/Ordinances. No action required.

A. None

8. CITY ATTORNEY ITEMS:

9. CITY MANAGER ITEMS:

10. ROLL CALL:

11. ADJOURN:

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE HUMAN RESOURCES DEPARTMENT, ADA COORDINATOR, AT 728-9740, 48 HOURS IN ADVANCE OF THE MEETING.

F.S.S. 286.0105 "If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the proceedings, and that for such purpose they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." The City of Leesburg does not provide this verbatim record.

**AGENDA MINUTES
CITY COMMISSION MEETING
VENETIAN CENTER, 1 DOZIER COURT
MONDAY, MAY 10, 2021 5:30 PM**

1. CALL TO ORDER

The City of Leesburg Commission held a regular meeting Monday, May 10, 2021, at the Venetian Center. Mayor Christian called the meeting to order at 5:30 p.m. with the following members present:

Commissioner Jimmy Burry
Commissioner Jay Connell
Commissioner Dan Robuck
Mayor John Christian

Commissioner Mike Pederson was absent. Also present were City Manager (CM) Al Minner, City Clerk (CC) J. Andi Purvis, City Attorney (CA) Fred Morrison, the news media, and others.

INVOCATION

Gas Director, Jack Rogers gave the invocation followed by the Pledge of Allegiance to the Flag of the United States of America.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

2. PROCLAMATIONS

A. None

3. PRESENTATION

A. None

4. PUBLIC COMMENTS:

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Lay Brother, Stephen Gerard, Tangerine Court, stated he is delighted to report back on the diplomacy of

life and the progress for the sanctity of life in the United States. He said this is the most appropriate time to do so, with Mothers Day and Fathers Day, and while we all have wonderful mothers and fathers, his mother made some pretty good cobblers. He was happy to announce that Lubbock, Texas is the latest city for the Sanctity of Life where the citizens have just voted it a sanctuary city for the unborn and that means they are outlawing abortions. He previously dropped off a resolution from Roswell, New Mexico and he hopes this commission will pray about initiating a resolution declaring Leesburg a prolife sanctuary city.

5. CONSENT AGENDA:

Routine items are placed on the Consent Agenda to expedite the meeting. If the Commission/Staff wish to discuss any item, the procedure is as follows: (1) pull the item(s) from the Consent Agenda; (2) vote on remaining items with one roll call vote, (3) discuss each pulled item and vote by roll call

Items pulled for discussion: 5.B.1 and 5.C.2

5.B.1 = Purchase request by Public Works/Solid Waste for an air curtain burner

5.C.2 = Third Amendment to the Amended and Restated Ground Lease with Venetian Gardens Site Holdings, LLC

Commissioner Robuck moved to adopt the Consent Agenda except for **5.B.1 and 5.C.2**, and Commissioner Burry seconded the motion.

The roll call vote was:

Commissioner Connell	Yes
Commissioner Robuck	Yes
Commissioner Burry	Yes
Mayor Christian	Yes

Four yeas, no nays, the Commission adopted the Consent Agenda, as follows:
(Each item has its coordinating Resolution number listed below the header)

A. CITY COMMISSION MEETING MINUTES:

1. Regular meeting held April 26, 2021

B. PURCHASING ITEMS:

2. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Construction Services Agreement with US Water Services Corporation for an amount of \$85,711.00; and providing an effective date.

Resolution 10,851

3. **Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Construction Change Order No. 4 with Evergreen Construction Management, Inc. for the Aquatic Complex project for an amount of \$151,823.28 and amending the owner contingency amount to \$198,586.65; and providing an effective date.**

Resolution 10,852

C. RESOLUTIONS:

1. **Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Revised Memorandum of Agreement to reimburse U.S. Customs and Border Protection (CBP), for costs related to FY 2021 IT Refresh, repealing the memorandum executed on April 26, 2021 by Resolution 10,847; and providing an effective date.**

Resolution 10,853

1. **Purchase request by Public Works / Solid Waste for an air curtain burner using a General Services Administration (GSA) Multiple Award Schedule (MAS) from Air Burners, Inc. for an amount of \$135,211.03.**

Commissioner Robuck introduced the purchase request to be read by title only. CC Purvis read the purchase request by title only.

Commissioner Robuck made motion to approve the purchase request and Commissioner Burry seconded the motion.

Mayor Christian requested comments from the Commission and the audience.

Commissioner Connell asked if there were any permitting requirements for this because when reading the memorandum it looks like this company has a monopoly on this type of equipment; are they going to maintain it, and what is the cost to maintain it versus what we are currently doing. **CM Minner** answered that he does not have an exact cost for the maintenance, but we spend about fifty thousand dollars a year on the collection of debris. When our residents put out their yard debris, we pick it up and take it to the old landfill and dispose of it. Currently, each year we budget about fifty thousand dollars to get rid of that debris and we do it one of two ways, whichever is the cheapest way is the one we choose.

We either chip it or have another company come in and burn it, but either way it costs about fifty grand a year and that does not keep us up-to-date, we always have a big stack of stuff. The plan staff thinks is best (which is a little bit of a copy from Fruitland Park) is to purchase the air curtain so we can do our own and that cost is the one thirty five. At this time he is not sure of the market on this, but staff feels pretty confident that in about three years we will make our money back. As far as permitting goes, a permit is required and we are optimistic that we will get one because Fruitland Park received one.

However, we will not proceed forward with the purchase until we have that permit in hand. We cannot apply for the permit until we have the commission's approval to make the purchase. For the maintenance we do not have those costs, but the company is providing maintenance to the facilities department so they can get educated on what they need to do to maintain this. Again, he believes we will make our money

back and we will be able to keep up with the workload better.

Commissioner Connell inquired what the lifespan is for a piece of equipment like this. **Public Works Director (PWD), Cliff Kelsey** replied about twenty years. **Commissioner Robuck** questioned how long this company has been in business. **PWD Kelsey** responded he is unsure, but believes it is around twenty-five years. **Commissioner Robuck** commented that he has never heard of a contraption like this, but he also does not know much about the disposal of garbage like this. He asked how long Fruitland Park has been doing this. **PWD Kelsey** answered five years. **Commissioner Robuck** wanted to know if they have been happy with their air curtain. **PWD Kelsey** replied yes.

Commissioner Connell asked what the fuel source was for this machine. **PWD Kelsey** answered that it is diesel fuel. **Commissioner Connell** then questioned if it has a self contained tank on it because he noticed in the memorandum that it can be moved around. **PWD Kelsey** responded that it does and it is portable and that is why they like it; they can move it and take it where ever it is needed. The one Fruitland Park has is stationary and they have to bring everything in, but we chose for the portable option. **Commissioner Connell** inquired if we have the equipment necessary to move this or would we have to purchase a truck to move it around. **PWD Kelsey** answered it is a roll off container and we already have the trucks necessary to move it. It would be used in solid waste for roll offs and it is compatible, which is why we want to go with this brand, because it meets all the specifications.

Commissioner Burry asked if we have the equipment necessary to clean it, like a skid steer and stuff like that. **PWD Kelsey** replied yes.

The roll call vote was:

Commissioner Robuck	Yes
Commissioner Burry	Yes
Commissioner Connell	Yes
Mayor Christian	Yes

Four yeas, no nays, the Commission approved the purchase request.

2. **Resolution of the City Commission of the City of Leesburg, Florida authorizing and directing the Mayor and City Clerk to execute a Third Amendment to Amended and Restated Ground Lease between the City of Leesburg and Venetian Gardens Site Holdings, LLC for the purpose of ratifying and confirming previous agreements despite lack of two witnesses to signatures; and providing an effective date.**

ADOPTED RESOLUTION 10,854

Commissioner Burry introduced the resolution to be read by title only. CC Purvis read the resolution by title only.

Commissioner Robuck made motion to adopt the resolution and Commissioner Burry seconded the motion.

Mayor Christian requested comments from the Commission and the audience.

Commissioner Connell inquired if this will change the deadline dates they were given to start the project and get it done. **CM Minner** remarked that this does not change any of that; in fact it shows that they

were doing what they said they were going to do. The reason for this amendment is Thad Boyd is transferring his shares of the Venetian Isles restaurant and the buyer they are bringing in thought there should be two witnesses on the agreement as part of the sale. **Mayor Christian** asked if we knew who the new buyer is. **CA Morrison** answered he has not seen the paperwork yet, but these people were already involved and they are just buying him out; at least that was his understanding. **CM Minner** commented he was told his name, but cannot remember; however, he is a very reputable restaurateur and investor from Orlando. **Mayor Christian** mentioned that if he was already involved that means we have already vetted him a little bit.

The roll call vote was:

Commissioner Burry	Yes
Commissioner Connell	Yes
Commissioner Robuck	Yes
Mayor Christian	Yes

Four yeas, no nays, the Commission adopted the resolution.

**6. PUBLIC HEARINGS AND NON-ROUTINE ITEMS:
COMPREHENSIVE PLAN INFORMATION SIGN-UP SHEET (YELLOW)
AVAILABLE**

A. SECOND READING OF ORDINANCES

1. None

B. FIRST READING OF ORDINANCES

- 1. An Ordinance of the City of Leesburg, Florida, amending the mixed-use PUD (Planned Unit Development) on approximately 640 +/- acres to extend the timeframe of the development for a property generally located north of Poe Road at the intersection of CR 44, west of Radio Road and extending northwest to Haines Creek, as legally described in Sections 3, 4, and 5, Township 19 South, Range 25 East, Lake County, Florida; and providing an effective date. (Orange Bend)**

Commissioner Robuck introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Christian requested comments from the Commission and the audience.

Commissioner Connell asked if there was a reason for this extension. **CM Minner** replied that the planning and zoning department, along with the commission currently has a forty-eight month sunset provision within their PUDs and that sunset provision sets the clock for a subdivision to start building once they receive an approval. If they do not start building and that sunset provision expires they have to come back and reapply for another approval. When they have come back we either make a provision to not sunset them or we have taken that forty-eight months and renewed it with no sunset provision

meaning they never have to come back again. There have been times we have not put that provision in the PUD for a sunset and that went unspoken. There are about seven subdivisions that have gone through this process and at this stage Orange Bend is about to sunset. The Planning and Zoning Manager is recommending this change because from the planning spectrum it gives finality to the zoning and land use maps. When this is done it is set forever and there is no changing it. They have had three or four different subdivisions come back after they have expired and they have had to go through the same process over again and listen to the same arguments and do the same things over again, so this could spare everyone from repeating the same process. That is why this is being recommended.

Commissioner Burry stated he understands that we put a forty-eight month clause in there because we want to encourage the development, but he has concerns with having no sunset because at that point what encouragement would we be putting on the developer to develop the subdivision. He wonders about the planning phases, for example; what if a development comes in and it just sits there, hanging out and it never develops. How are we supposed to plan around that, where are our lines to get that done if we do not know if they are ever going to come or not. He knows he is the new guy, but he thinks things like this need some kind of cap. Maybe two years is not a good idea, maybe five years is a better idea, but the indefinite ability to build whenever they want is not necessarily it. Another thing he was looking at and could not find a good example for, is in those PUDs there are lists of what you can do within the PUD. What happens ten years from now if something changes or something that we might not have anticipated happens and now what they were planning cannot go into that development, so he is not sure how that would work. **Mayor Christian** stated that he concurs with Commissioner Burry, he does not think we should be giving them an indefinite pass. He has always been leery of developers who come in saying they are going to build and ten years later they still have not built. He is leaning towards giving them an extension, but we still have to give them a timeframe as to when they need to do something. **Planning and Zoning Manager (PZM) Miller** stated that this provision does not work as an incentive, push or a restriction to build and in the eighteen years he has worked here it has accomplished zero. He understands the point they are making and it seems that we are saying they have to get this done within the forty-eight months, but we can go back to Tara Oaks, we have heard them three times and they still came out with six hundred units all three times. We can talk about Lake Denham, that one went before the board three times along with Fern Drive, which is located by Sunny Side, about a hundred units and the board has seen that one twice and nothing ever changes. He gets the point and respectfully accepts the commission's comments, but it creates a serious problem for staff in terms of predictability because they have four years and then they have to come back before the board. He thinks from staff's perspective, and obviously the commission can vote however, but it creates a lot of extra work for staff, creates an uncertainty for the developers, the city commission and the public to not know what is possible. If the market were to change, and if the developer wanted to make changes, they would have to come back before the board for approval. From his standpoint, he has not seen this create a benefit of any sort; the development community has not taken this as an incentive to get their developments done within that forty-eight months. **Mayor Christian** pointed out that with the other developments Leesburg has not changed much around Tara Oaks, it has only changed a little around Pennbrooke. If you go towards Lake Denham not much has changed on US-27, but if you look at what is happening around Orange Bend and the Silver Lake area, if you get five hundred residents and you have someone come back years from now and say they want to do six hundred acres then we may have an issue. What if CR-44 has not been expanded, what if there has been more car wrecks, more fatalities, people may have a whole different perspective in that area. What would be telling the city commission ten years from now that you have to live with that even though your neighborhood has changed. He understands staff's time, but when a developer comes in they pay us to hire people to deal with that stuff and he does not want to handicap a community that is growing. We may have six hundred new residents in those other developments and unlike Tara Oaks, where he lives, they have not had an influx of new residents like Lake Denham, so nobody is going to come in and scream about five or eight years ago because nothing

has really changed. This is different if they do not build in two years; that whole neighborhood is going to be a different. With CR-44 we have already heard people complaining about the water and the two lane highway and unless that road expands ten years from now this will not be on the forefront of development, it will be on the back end and there maybe some problems. **Commissioner Robuck** wanted to know at what point in the process of a PUD does the developer go through the traffic studies.

PZM Miller answered when they first come in for the PUD they have to do traffic and environmental studies. If they have come back for an extension they will not make them do it again. **Commissioner Robuck** asked for the sake of argument if there was no extension and we approved a PUD in 2010 and it was still valid and the developer decided they wanted to build now would they have to do anything with the county for traffic. **PZM Miller** replied yes, they would have to go back to the county at that point for another traffic study. They are required to do it at the first PUD and then they have to do it again at the point of development, unless they start development immediately and consecutively after the approval.

That is the only time you would not have to do it again. **Commissioner Robuck** commented that he gets all the concerns, but he is a little leery about indefinite PUDs because areas change. It would not be quite as we approved it because things change. They would have to mitigate their traffic impacts like the Silver Lake area, which is a really good example, and that is why he asked because he honestly did not know. Now, if there is nine hundred more houses they may have to do a lot more traffic mitigation than they originally thought because things have changed. For him, he would be comfortable as far as maybe ten years because he does not want staff to be unduly pushed, but as Commissioner Burry stated we do not know where things are going to be and that is the furthest he could see out. Even for decision sake as long as the traffic study has to change he could still be comfortable with it in ten years, but he is just not sure if that would take care of 70-80% of them. **PZM Miller** remarked that he does not know if ten years would make a difference from a standard zoning district because you still have to do it all the same; if it were an R-1 zoning district for single family you still have to do all the same stuff. **Commissioner Robuck** pointed out that what he meant is if they approve twenty PUDs a year how many of those do not get built within those ten years, there has to be a number that does not get built. What about four years or five years. He asked that maybe some information and numbers can be pulled together and brought back because it would be helpful to see that so they can pick a year that could possibly eliminate 80% of staffs wasted time as opposed to another year. **PZM Miller** stated that makes sense, but since 2005 when a number of these were done during that timeframe we have been through two major recessions. He is unsure if that is a good way to measure it, we could do it that way, but we do not know what the next ten to fifteen years will hold economically. Those numbers could skew the past ten years. He sees it as making it like a standard zoning district; in terms as it is there, it is locked in, and if they want to change that they would have to come back. It would save this commission a lot of hours listening to the same arguments three times over, every four years. **Mayor Christian** pointed out that they will not be here because they will be termed out so in ten years they will all be gone. **CM Minner** asked if they want them to move forward with this ordinance and make the suggested changes of five or ten years.

Commissioner Connell questioned how long the traffic and environmental studies are good for. **PZM Miller** replied it is not for very long; he believes about ninety days. If they are consecutive in the zoning and building it is fine, but once you go to do a zoning you have to do a phase one environmental study, and then once you do a full development phase you would have to do the full environmental and traffic studies rather than the basic analysis. **Commissioner Connell** inquired if they did the full environmental and full traffic study next week and they did not develop their project for four years are those studies still good or would they have to redo them. **PZM Miller** answered that they would have to be redone.

Mayor Christian asked if everyone was okay with bringing this back as is or if they wanted staff to make some adjustments. **PZM Miller** wanted to reiterate that staff, from their perspective, has never had anything good come out of this deadline. **Commissioner Robuck** stated he would like to get some data on this because that would be helpful. He would like to know how many have come up, what the outcome was, did anything change, what changed, how they were treated in the past, things like that, which would be helpful for him in making a decision. **Commissioner Connell** remarked his two cents

would be, understanding where Mr. Miller is coming from, if we are to approve something indefinitely or even for a long span of ten years where we have new people moving into that area and they do not have a say down the road on what is going in because it has already been approved prior, he does not know if he would be in favor of an indefinite PUD approval because it is not taking into consideration of the new residents moving in adjacent to that property. **Commissioner Burry** stated that he is good with that and that is his sentiment also. **CM Minner** stated they can amend this to ten years and bring it back if the Commission likes. **Commissioner Connell** said he feels that is too far out. **Mayor Christian** commented that what Commissioner Robuck said works for him; bring back some data to knock around and then decide. **Commissioner Robuck** pointed out that we are talking about a specific PUD here and now it seems like we are talking about what do we do with PUDs in general. Are we looking at making a decision on this single PUD item or are we now looking at all PUDs in general moving forward. **CM Minner** said staff will bring this back next meeting with some data and then the extension is what we will need to talk about; forty-eight, indefinite, ten years. In that context; however, the commission will decide what we do with Orange Bend and with that direction to the Planning and Zoning Manager he will take that information and move forward on all PUDs in the future. We have good direction and it will be back in two weeks.

2. An Ordinance of the City of Leesburg, Florida, amending Chapter 17, Pensions and Retirement, Article IV, Police Officers' Retirement Fund, of the Code of Ordinances of the City of Leesburg; amending Section 1, Definitions; providing for codification; providing for severability of provisions; repealing all Ordinances in conflict herewith; and providing an effective date.

Commissioner Burry introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Christian requested comments from the Commission and the audience.

Commissioner Connell stated he would like further clarification on this issue. **CM Minner** stated we have an existing police pension fund, have had it for sometime now. One of the items in that collective bargaining agreement is the definition of pay. There are numerous definitions for the definition of pay, but one of them talks about special duty pay and special duty pay would be items where you may be working a city event, Bikefest or the Fourth of July. It could also be a special duty event that is not city related for example; Walmart at their super Christmas/Thanksgiving shopping events and they want a couple police officers to come in around midnight on Black Friday, those are set up where Walmart pays the officers through the city. It is defined in the collective bargaining agreement what special pay is eligible to be a pensionable pay, so when they get that overtime check you would know what part of your pay is pensionable earnings and what is not. The way the city and the union defined special pay, it is eligible for pensionable benefits, which was agreed on. The actuary for all these years has been defining that special pay as pensionable, so when they do their actuarial report, the city has been paying more into the fund because we have been picking up that 7.5% of the employees contributions. We have been doing this forever and the actuary said you have to fix that. We went back and met with the chief, Melissa and the union representatives and the union decided that they liked the actuaries interpretation of the definition and they want all those duties to be pensionable; the only difference in the unions decisions was that they do not want the retro pay for all those times they got special pay. They want it to be part of the pensionable benefits, but they want it to start on July 1st. The city's position should be okay, we have been paying that actuarial earning so if we start getting that 7.5% from employees it will help us out a little bit, it may be a marginal benefit to the city. In any case, his recommendation is to go ahead keep

the actuary happy and let the special pay be defined that way, and starting July 1st the members of the union will pay their 7.5% of what is a pensionable benefit. Then after that we will have to make an MOU with the CBA and the union to define the special pay as suggested by the actuary. **Commissioner Robuck** stated he knows what the actuary is saying for the calculations that we have to contribute for special pay; however, are they earning pension on that special pay. **CM Minner** said this is the hitch, the actuary has been calculating it with that being a pensionable benefit. **Commissioner Robuck** questioned with that being our contribution. **CM Minner** said yes. **Commissioner Robuck** then questioned if this is actually going into their balances and if it is that could be impacting how much we have to makeup as a catchup contribution. **CM Minner** added that the city is going to start getting that 7.5% from the members for their contributions. **Commissioner Robuck** remarked maybe, maybe not because the catchup contribution is a fake number. The actuarial contribution is not a catchup contribution, the actuarial contribution is a fake number because the pension is not 100% funded, so it is a number they make us put in every year, but their balances are not going up. Now this balance is going to go up and we are going to be putting in the same amount of money and that money is going to get us closer to 100% because it is not actually going to their pension. The actuary is saying we need to pay it, but it is not going to their pension because they do not think it qualifies for their pension because it is not in this collective bargaining agreement. **CM Minner** stated he wanted to make sure he had this right, the actuary is saying that all special duty pay is pensionable. **Commissioner Robuck** pointed out that the CBA does not so it is not going into the balances. **CM Minner** agreed.

Commissioner Robuck continued to say that the actuary is looking at it when doing the calculations at the end of the year and he is looking to see how much we have contributed to the pensions. If there is a variance between what he is saying and what the CBA says it just makes it so that we fund the pension further. He stated that he would like further clarification on this when it comes back for second reading.

CM Minner stated he will verify that and get further clarification. He does not think that is correct because the actuary says we have to pay 12% and that is our contribution, but that 12% includes the \$20,000 of salary, which was a non-pensionable item that was getting counted as a pensionable item. So, we were paying the 12% but the employees were not helping because they were paying that 7.5%.

Commissioner Robuck remarked what is being said makes sense, but the way it was initially worded makes him question that. **Commissioner Burry** asked if he could find out how much or what the percentage is that they are talking about. **CM Minner** stated he will get that and bring it back.

C. NON-ROUTINE ITEMS

1. None

7. INFORMATIONAL REPORTS:

The following reports are provided to the Commission in accordance with the Charter/Ordinances. No action required.

A. Financial Reports as of March 2021

No comments.

8. CITY ATTORNEY ITEMS:

CA Morrison stated he had a brief update on the Value Host Inn or whatever they are calling the Holiday Inn these days. He heard from the broker, who has it up for sale, and he said that the lady who holds the title cannot be served because she resides outside of the country. She was unaware of the foreclosure, obviously, because we were unable to serve her or get in touch with her. The broker said now that she has found out about it she has authorized the broker to do whatever it takes to catch things up. When we looked at the violations it appears all they were cited with was mowing and cleanup violations on the exterior, so we are going to check with code enforcement and verify that, but they should have it cleaned up so it looks better. They are willing to pay all the fines and costs that the city has incurred up-to-date, so we are looking at a twenty some thousand dollar fine paid and the grass gets mowed, but the building will still sit there. **Mayor Christian** wanted to know if the chief could come and talk about code enforcement with the condition of that building and whether or not that structure is in unsafe conditions. Does any of that lie to the level of a code infraction or is this all just grass cutting.

CA Morrison answered that it probably does, but it was not part of this case that led to the imposition of this fine. From the legal standpoint of the foreclosure, all we can do is foreclose the fine that was levied. If they cure those violations and pay the fines then on the record they are clear. If the city wants to go out and inspect the buildings and cite the building and housing code violations with what is out there, then they are free to do that. They can start more cases and we can pick this up again, but right now the status of it is lawn mowing and that is all we have to work with. **Mayor Christian** pointed out that we are harder on residential than commercial property owners. This is located on a main thoroughfare and this is not our first time interacting with this particular piece of property and nothing against the owner, but we have been through this with the previous owner. Now we are going to have a code enforcement that is going to sit there for another two years looking all disarray. Can't we go more than a hundred dollars on mowing the grass because that is minimal for a million-dollar property that sits right on the main road.

We have people living there, we have trash every where, and the condition of that building looks unsafe and unsightly. We as a city need to do a better job because we are only looking at twenty thousand dollars over two years and we have houses with more than twenty thousand dollars in fines and those are residential homes. We have to do a better job if we are going to clean up this corridor and this does not help us in any way when we bare lines and do intercepts if we are going to have a building in this condition that has done nothing but make empty promises to the city. We have had all kinds of problems with this and they said they were going to remodel it and they were going to do this and that and yet nothing has happened. He wants to go on the record and say whatever we have to do we need to do and if we have to put the code enforcement supervisor or have the chief walk the property with our building official to find out what we can do to bring this property into compliance we need to do it. **CA Morrison** stated that it will take the building officials involvement to get into the building aspects of it.

Commissioner Robuck inquired if there were still people living there and if that fell under the nuisance ordinance. **CA Morrison** said yes, but it is predicated on a certain number of arrests for a certain specified group of offenses over a period of time. As far as he is aware that property has not risen to that level on those type of offenses. It would primarily be gambling and prostitution that sort of thing, if there are vagrants living in that building that does not fall under the nuisance statute.

9. CITY MANAGER ITEMS:

CM Minner had nothing this evening.

10. ROLL CALL:

Commissioner Connell had nothing.

Commissioner Robuck commented that normally he has to wait until budget time to discuss pensions so thanks for bringing that up tonight; it made his night.

Commissioner Burry stated he attended the institute for elected officials this past weekend on behalf of the city. He learned a lot about city government, but what he learned the most and what he pulled away from it the most is that the City of Leesburg is doing a heck of a lot better than all of the other city's with the problems that he heard. He thinks we should pat ourselves on the back because we are doing a good job.

Mayor Christian remarked that he attended the Rails to Trails with the Friends of Lake County, which was presented right here in Leesburg. Commissioners Burry and Pederson were there along with the three queens Joannie, Maria and Sandi. Leesburg is poised with the trails, he does not know if the budget will be impacted by it, but he does think it was a good presentation. They were talking about comparing Leesburg, Clermont, and Winter Gardens downtowns and their trails and he was sharing this information with his wife. He believes Leesburg has a great unique opportunity and if we put our blinders on and look at Leesburg as a whole and not just isolate downtown; if we connect the downtown, Pine Street, Venetian Gardens, Pat Thomas Baseball Fields and Ski Beach he thinks we have something here other communities do not have. We cannot just mix the trails, we have to mix the culture with some innovated aquatic centers. He thinks we have the opportunity to do something very grand in Leesburg and in Lake County with our trails to connect our neighborhoods and become a regional player with social activities. He would like the commission to think about that. With the Pat Thomas Baseball Fields he noticed that it needs some painting and he does not want that to become an eye sore. There may not be money in the budget, but maybe we can get some volunteers from the public works department to paint it and maybe we can tie that in somehow with all those other components in this part of Leesburg and it could grow tremendously.

He also had the opportunity to visit Treadway Elementary School and even though we were only talking about Orange Bend for a moment and in fact some of the residents came in and there was a discussion about how Treadway was overcrowded, and he went and spoke with the principal and she took him to many of their classrooms. One thing he did not know is that some of the classrooms are portable classrooms and they have been there for twenty years, yet they have no covered walkways for these kids. The parents are complaining because these kids have to walk outside through the rain. This got him thinking that until people start moving into our city and start attending our public schools, the school board is not going to enhance our schools; whether it be Beverly Shores, Fruitland Park, Leesburg Elementary or Treadway, which used to be the premier elementary school. He would like everyone to consider this when we start talking about approving developments because with what is going on at the south end of the county and in Mt. Dora, those schools are going to get priority over our schools; so this is something that we need to mention and think about when approving developments. We need to start talking and requesting that the school board look at Leesburg because it is becoming a big tight space and we need to improve our school facilities because the children are coming and they will be in our school systems over the next two to three years and this is something that we need to keep in our radar.

11. ADJOURN:

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE HUMAN RESOURCES DEPARTMENT, ADA COORDINATOR, AT 728-9740, 48 HOURS IN ADVANCE OF THE MEETING.

F.S.S. 286.0105 "If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the

proceedings, and that for such purpose they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based." The City of Leesburg does not provide this verbatim record.

The meeting adjourned at 6:15 p.m.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.1.

Meeting Date: May 24, 2021

From: Mike Thornton, (Purchasing Manager), Cliff Kelsey, (Public Works Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a construction services agreement with Marion Rock, Inc. for the construction of a reuse water main extension along County Road 48 from Legacy to Spring Creek development for an amount of \$122,000.00; and providing an effective date.

Staff Recommendation:

Staff recommends award of Invitation for Bid (ITB) 210191 to Marion Rock, Inc. and approve the resolution authorizing execution of the Construction Services Agreement with Marion Rock, Inc. for an amount of \$122,000.00.

Analysis:

The purpose of this project is to extend an existing 8-inch reuse water main from the Legacy Subdivision to the entrance of the Spring Creek Subdivision. The new reuse line extension will be run along County Road 48. The majority of this work will take place in the Lake County Right of Way along County Road 48.

Procurement Analysis:

On April 5, 2021 the Procurement Division issued Invitation for Bids (IFB) 210191 for the County Road 48 Reuse Extension (Spring Creek). On April 27, 2021 the City received five bid responses. The summary of the bid responses is provided here. A detailed bid tabulation is also attached for your review.

SUMMARY OF BIDS

<u>Bidder Name</u>	<u>Bidder Location</u>	<u>Total Bid Amount</u>
Marion Rock	Ocala, FL	\$122,000
US Water Services Corporation	New Port Richey, FL (office in Leesburg)	\$128,573
Black Sands Development Group	Daytona Beach, FL	\$131,625
Barracuda Bldg Corporation	Apopka, FL	\$138,900

Bulldog Sitework, LLC

Lady Lake, FL

\$146,693

Procurement applied the City's Local Vendor Preference policy but it did not result in a change to the lowest bidder. U.S. Water Services Corporation did qualify as a Tier I LVP with a 5% preference. Applying the preference did not result in there bid becoming the lowest LVP adjusted bid.

Procurement staff reviewed the bid responses for responsiveness and have deemed Marion Rock a responsible bidder submitting the lowest responsive bid. Staff recommends award to Marion Rock. Staff verified three past project references for the company. Two came back with an overall rating of Very Good and the other two had a rating of Exceptional.

Options:

1. Approve the resolution authorizing execution of the Agreement with Marion Rock, Inc. for an amount of \$122,000.00; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

Funds are specifically budgeted and available for this project.

Account No.	043-3099-533.63-10
Project No.	430002
WF No.	WF1338386 / 001
Requisition	43255
Budget	\$200,000.00
Available	\$200,000.00

Submission Date and Time: 5/19/2021 1:55:16 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A
CONSTRUCTION SERVICES AGREEMENT WITH MARION ROCK, INC.
FOR THE CONSTRUCTION OF A REUSE WATER MAIN EXTENSION
ALONG COUNTY ROAD 48 FROM LEGACY TO SPRING CREEK
DEVELOPMENT FOR AN AMOUNT OF \$122,000.00; AND PROVIDING AN
EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA:**

THAT the Mayor and City Clerk are hereby authorized to execute an agreement with MARION ROCK, INC. whose address is 5979 SE Maricamp Road, Ocala, Florida 34472 for construction services to extend a reuse water main from Legacy to Spring Creek along County Road 48 pursuant to Invitation for Bid 210191.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 24th day of May 2021.

Mayor

ATTEST:

City Clerk

FINAL DETAILED BID TABULATION
INVITATION FOR BID 210191
CR-48 REUSE MAIN EXTENSION (SPRING CREEK)

			Marion Rock		US Water Services		Black Sands Development Group		Barracuda Bldg Corp		Bulldog Sitework, LLC	
			Ocala, Florida		New Port Richey, FL (office in Leesburg)		Daytona Beach, Florida		Apopka, Florida		Lady Lake, Florida	
BID ITEM DESCRIPTION	QTY	UOM	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
GENERAL REQUIREMENTS	1	LUMP SUM	\$6,000.00	\$6,000.00	\$13,415.00	\$13,415.00	\$58,957.25	\$58,957.25	\$12,000.00	\$12,000.00	\$21,447.50	\$21,447.50
REUSE WATER MAIN CONSTRUCTION	1	LUMP SUM	\$116,000.00	\$116,000.00	\$115,158.00	\$115,158.00	\$72,668.28	\$72,668.28	\$126,900.00	\$126,900.00	\$125,246.44	\$125,246.44
				\$122,000.00		\$128,573.00		\$131,625.53		\$138,900.00		\$146,693.94
Local Vendor Preference - Tier I-5%					\$128,100.00		\$128,573.00			\$0.00		\$0.00
Local Vendor Preference - Tier II-2%					\$130,662.00		\$0.00			\$0.00		\$146,693.94
TIME FOR COMPLETION												
Number of CALENDAR DAYS to begin work after NTP:			60		30		30		14		45	
Number of CALENDAR DAYS to completon after NTP:			120		120		120		90		120	
BID RESPONSE RESPONSIVENESS REVIEW												
IS THE BIDDER DETERMINED TO BE RESPONSIBLE			YES		YES		YES		YES		YES	
IS THE BIDDER DETERMINED TO BE RESPONSIVE			YES		YES		YES		YES		YES	
Contractor License Number			CUC1223772		CUC1223914/CGC003307		CUC1224661		CGC1504612		CBC1261467	
Meets Contractor License Requirement			Yes		Yes		Yes		Yes		Yes	
Contractors License Verified on DBPR			Yes		Yes		Yes		Yes		Yes	
Claims Local Vendor Preference			None		Tier I		None		None		Tier II	
Project References			Yes		Yes		Yes		Yes		Yes	
Scurtinized companies Certification			Yes		Not Applicable		Not Applicable		Not Applicable		Not Applicable	
Bid Guarantee			Not Applicable		Not Applicable		Not Applicable		Not Applicable		Not Applicable	
Conflict of Interest			None		None		None		None		None	
Acknowledged Revisions Published Answers Addenda			Yes		Yes		Yes		Yes		Yes	
Exceptions Taken			No		No		No		No		No	
Bidders Certification / Signature			Yes		Yes		Yes		Yes		Yes	

has been reviewed and approved by:



Mike Thornton, CPPO - Purchasing Manager

AGREEMENT FOR CONSTRUCTION SERVICES

THIS AGREEMENT is made as of the 24th day of May in the year 2021, between The City of Leesburg, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY”), and **MARION ROCK, INC.** whose address is 5979 SE Maricamp Road, Ocala Florida 34472 Contractor mailing address] (hereinafter referred to as the “CONTRACTOR”).

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. **Contract Documents.** The following documents and information are incorporated by reference and made part hereof; and shall comprise the Contract Documents.

- a. This Agreement; and
- b. Invitation for Bid (IFB) 210191 – CR 48 Reuse Extension (Spring Creek) in its entirety; and
- c. The Professional Drawings titled ‘**CR 48 REUSE EXTENSION**’; and
- d. Supplemental Conditions included as Attachment ‘A’; and
- e. The CONTRACTOR’S response to IFB 210191 made electronically on April 27, 2021, 8:44:27 AM.

2. **Scope of Services.** The CONTRACTOR shall furnish the following services generally described as the “**CR 48 REUSE EXTENSION (SPRING CREEK)**” to the CITY as listed in Invitation for Bid 210191. Nothing herein shall limit the CITY’S right to obtain bids or proposals for services from other contractors for same or similar work.

3. **Total Construction Cost.** The CONTRACTOR shall perform the Services for a total price not to exceed **\$122,000.00**. The cost of these services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price.

4. **Labor and Materials.** The CONTRACTOR shall furnish all labor, material and equipment necessary for satisfactory contract performance. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the CITY's representative.

5. **Professional License.** The CONTRACTOR holds a Certified Underground & Excavation number CUC1223772 issued by the State of Florida. The name of the Qualifying Agent is Ryan Boutwell. CONTRACTOR must maintain this license during the full duration of this Agreement.

6. **Term of Agreement.** This Agreement shall commence upon the date of execution and shall remain in effect until such time as the contracted services have been

completed, and accepted by the CITY's authorized representative, unless earlier terminated in accordance with its provisions. Those portions imposing warranty requirements on CONTRACTOR, together with any implied warranties under law, will continue to remain in effect until completion of the expressed and/or implied warranty periods.

7. **Commencement and Completion.** The CITY and the CONTRACTOR mutually agree time is of the essence with respect to the dates and times set forth in the Agreement Documents. To that end, the CONTRACTOR will commence work not later than **SIXTY (60)** continuous calendar days after CITY issues a Notice to Proceed, and will diligently and continuously prosecute the work at such a rate, and with sufficient forces as will allow the CONTRACTOR to achieve Final Completion no later **ONE HUNDRED TWENTY (120)** continuous calendar days after CITY issues a Notice to Proceed, subject only to any adjustments in the contract time that may be authorized by change orders properly issued in accordance with the Agreement Documents. In executing this Agreement, CONTRACTOR affirms the time set for completion is reasonable.

8. **Liquidated Damages.** The CONTRACTOR shall consider all contingent work which has to be done by other parties arising from any cause whatsoever, and shall not plead his need of knowledge of said contingent work as an excuse for delay in his work or for non-performance.

If the work is not completed in full by the deadline specified, then for each day thereafter on which the work has not been completed, CONTRACTOR shall pay to the CITY liquidated damages in the amount of **ONE HUNDRED AND TWENTY-FIVE (\$125.00)** per calendar day, which CITY is hereby authorized to deduct from the final draw before paying any remaining amount to CONTRACTOR. The parties agree that it would be impossible or extremely difficult to compute the actual damages suffered by the CITY due to late completion of the work, that it is therefore appropriate to provide for liquidated damages in this Contract, and that the amount of liquidated damages specified is reasonable and bears a substantial relationship to the probable amount of actual damages the CITY would suffer, and therefore does not constitute a penalty or forfeiture. CONTRACTOR acknowledges that this provision is material to the CITY and that the Owner would not have entered into this Contract but for this provision and that as a result of the Owner's reliance on this provision, the CONTRACTOR shall be stopped to deny or dispute the validity or enforceability of this liquidated damage clause.

Nothing shall be construed as limiting the right of the CITY to declare the Contract forfeited, or to take over the work, or to claim damages for the failure of the CONTRACTOR to abide by each and every one of the terms of the Contract Documents. The completion date shall be construed as being the date on which the work is fully accepted by the CITY.

9. **Termination for Convenience or Cause.**

a. **For Convenience.** The CITY may terminate this Agreement at any time without cause by providing the CONTRACTOR with SEVEN (7) calendar days advance

notice in writing, delivery by email is acceptable. In the event of termination for convenience, all finished or unfinished deliverable items prepared by the CONTRACTOR under this Agreement shall, at the option of the CITY, become the CITY's property. If the Agreement is terminated for convenience by the CITY as provided herein, the CONTRACTOR shall be paid for services satisfactorily completed, less payment or compensation previously made. The CONTRACTOR shall not incur any additional expenses after receiving the written notice of termination.

b. **For Cause or Default.** If, through any cause, the CONTRACTOR should fail to fulfill in a timely and proper manner its obligations under this Agreement, other than for the instances listed below due to "Force Majeure," the CITY will have the right to terminate this Agreement by providing a written notice (Show Cause Notice) to the CONTRACTOR requiring a written response due within FIVE (5) calendar days from receipt of the written notice as to why the Agreement should not be terminated for default. The CITY's Show Cause Notice shall include an Agreement termination date at least SEVEN (7) calendar days subsequent to the due date for the CONTRACTOR's response. Should the CONTRACTOR fail to respond to such show cause notice, or if the CITY determines that the reasons provided by the CONTRACTOR for failure of the CONTRACTOR to fulfill its contractual obligations do not justify continuation of the contractual relationship, the Agreement shall be considered to have been terminated for default on the date indicated in the Show Cause Notice. Should the CITY determine that the CONTRACTOR provided adequate justification that a termination for default is not appropriate under the circumstances; the CITY shall have a unilateral option to either continue the Agreement according to the original contract provisions or to terminate the contract for convenience. In the event that the CITY terminates the contract for default, all finished or unfinished deliverable items under this contract prepared by the CONTRACTOR shall, at the option of the CITY, become CITY property, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding this compensation, the CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement, and the CITY may withhold any payment due the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the CITY from such breach can be determined.

In case of default by the CONTRACTOR, the CITY may procure the services from other sources and hold the CONTRACTOR responsible for any excess cost occasioned thereby. The CITY reserves the right to require a performance bond or other acceptable alternative performance guarantees from the successor CONTRACTOR without expense to the CITY.

In addition, in the event of default by the CONTRACTOR under this Agreement, the CITY may immediately cease doing business with the CONTRACTOR, immediately terminate for cause all existing Agreements the CITY has with the CONTRACTOR, and debar the CONTRACTOR from doing future business with the CITY.

Upon the CONTRACTOR filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the CONTRACTOR, the CITY may immediately terminate, for cause, this Agreement and all other existing agreements the CONTRACTOR has with the CITY, and debar the CONTRACTOR from doing future business with the CITY.

The CITY may terminate this Agreement for cause without penalty or further obligation at any time following Agreement execution, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the CITY is at any time while the Agreement or any extension thereof is in effect, an employee or agent of any other party to the Agreement in any capacity or consultant to any other party of the Agreement with respect to the subject matter of the Agreement. Additionally, the CITY may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the CITY from any other party to the Agreement.

Upon receipt of a termination action, for convenience or cause, the CONTRACTOR shall promptly discontinue all affected work (unless the notice directs otherwise) and deliver or otherwise make available to the City all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the CONTRACTOR in performing this contract, whether completed or in process.

10. **Force Majeure.** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Should there be such an occurrence that impacts the ability of either party to perform their responsibilities under this contract, the nonperforming party shall give immediate written notice to the other party to explain the cause and probable duration of any such nonperformance.

11. **Insurance Requirements.**

a. Scope of Insurance - The CONTRACTOR shall procure and maintain at its own expense, the following minimum insurance coverage, unless otherwise specified in the Contract Documents.

- i All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least A: VII.
- ii The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.
- iii The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.
- iv. The required insurance shall not limit the liability of the

CONTRACTOR. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR's interests or liabilities, but are merely required minimums.

- iv The provisions of the required insurance are subject to the approval of the City's Risk Manager, and upon request, the CONTRACTOR shall make available certified copies of the various policies for inspection.
- v All liability insurance, except professional liability, shall be written on an occurrence basis.
- vi The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- vii Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims which arise out of the agreement, Contract or lease.

b. Certificate of Insurance - The CONTRACTOR shall provide evidence of required minimum insurance by providing the CITY an ACORD or other Certificate of Insurance in forms acceptable to the Risk Manager for the CITY, before any work under the agreement, Contract or lease begins.

- i Except for workers' compensation and professional liability, the CONTRACTOR's insurance policies shall be endorsed to name the City of Leesburg as additional insured to the extent of the agreement, Contract or lease.
- ii The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows: City of Leesburg, Attn: Purchasing Manager, P.O. Box 490630, Leesburg, Florida 34749-0630.
- iii The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- iv The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- v The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- vi The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR's liability coverage(s).

c. Comprehensive General Liability - The CONTRACTOR shall purchase and maintain Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and

completed operations*, independent Contractors, Contractual liability covering the agreement, Contract or lease, broad form property damage coverage, and property damage resulting from explosion, collapse or underground exposures (x, c, u).

- i. For remodeling and construction projects, the CONTRACTOR shall purchase and maintain products and completed operations coverage for a minimum of three (3) years beyond the CITY's acceptance of the project.

d. Business Automobile Liability - The CONTRACTOR shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.

e. Workers' Compensation - The CONTRACTOR shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employers liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease.

12. **Waiver of Lien.** The CONTRACTOR agrees to make payment of all proper charges for labor and materials supplied and CONTRACTOR shall hold harmless the CITY against any claim arising out of any unpaid bills for labor, services, or materials furnished for the project covered by this Agreement.

13. **Indemnification.** The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The liability of the CONTRACTOR shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

14. **Codes, Laws, and Regulations.** CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

15. **Permits, Licenses, and Fees.** CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services. All permits and licenses required by law or requirements of the Request for Proposal will remain in force for the full duration of this Agreement and any extensions.

16. **Public Records Retention.** CONTRACTOR shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by CONTRACTOR herein. CONTRACTOR shall provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. CONTRACTOR shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by CONTRACTOR in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORDIA STATUTES TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORED'S RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-728-9731, 501 W. MEADOW STREET, LEESBURG, FLORIDA 34748.

17. **Access to Records.** The services provided under this Agreement may be funded in part by a grant from a government agency other than the CITY. As a requirement of grant funding CONTRACTOR shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

18. **Contingent Fees Prohibited.** The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working

solely for the CONTRACTOR, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

19. **Acceptance of Goods or Services.** The goods delivered as a result of an award from this solicitation shall remain the property of the CONTRACTOR, and services rendered under the Agreement will not be deemed complete, until a physical inspection and actual usage of the product(s) and/or service(s) is (are) accepted by the CITY and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.

Any goods and/or services purchased as a result of this solicitation and/or Agreement may be tested and/or inspected for compliance with specifications. In the event that any aspect of the goods or services provided is found to be defective or does not conform to the specifications, the CITY reserves the right to terminate the solicitation or initiate corrective action on the part of the CONTRACTOR, to include return of any non-compliant goods to the CONTRACTOR at the CONTRACTOR's expense, requiring the CONTRACTOR to either provide a direct replacement for the item, or a full credit for the returned item. The CONTRACTOR shall not assess any additional charge(s) for any conforming action taken by the CITY under this clause. The CITY will not be responsible to pay for any product or service that does not conform to the contract specifications.

In addition, any defective product or service or any product or service not delivered or performed by the date specified in the purchase order or contract, may be procured by the CITY on the open market, and any increase in cost may be charged against the awarded contractor. Any cost incurred by the CITY in any re-procurement plus any increased product or service cost shall be withheld from any monies owed to the CONTRACTOR by the CITY for any contract or financial obligation.

This project will be inspected by an authorized representative of the CITY. This inspection shall be performed to determine acceptance of work, appropriate invoicing, and warranty conditions.

20. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another

PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

21. **Independent Contractor.** The CONTRACTOR agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The CONTRACTOR shall be solely and primarily responsible for his and her acts during the performance of this Agreement.

22. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

23. **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

24. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

25. **Contact Person.** The primary contact person under this Agreement for each party is listed here. Contact person and information may be updated as needed by written, electronic mail is acceptable, communication to the other party. Notifying party shall receive confirmation the other party has received the change to the Contact Person.

CONTRACTOR Contact Information

Name/Title: Ryan Boutwell, Vice President
Address: 5979 SE Maricamp Rd
City, State & Zip: Ocala, Florida 34472
Telephone: (352) 687-2023 and (352) 817-1025
Email Address: Ryan.marionrock75@gmail.com

CITY Contact Information

Name/Title: Roy Rink, Project Manager
Telephone: 352-516-0157
Email Address: Roy.Rink@leesburgflorida.gov

26. **Approval of Personnel.** The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

27. **Disclosure of Conflict.** The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONTRACTOR and his duties under this Agreement.

28. **Warranty.** The CONTRACTOR agrees that, unless expressly stated otherwise in the bid or proposal, the product and/or service furnished as a result of an award from this solicitation shall be covered by the most favorable commercial warranty the CONTRACTOR gives to any customer for comparable quantities of products and/or services and the rights and remedies provided herein are in addition to said warranty and do not limit any right afforded to the CITY by any other provision of this solicitation.

The CONTRACTOR hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the CONTRACTOR in conjunction with this Agreement shall be new, warranted for their merchantability, and fit for a particular purpose.

29. **Risk of Loss.** The CONTRACTOR assumes the risk of loss of damage to the CITY's property during possession of such property by the CONTRACTOR, and until delivery to, and acceptance of, that property to the CITY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the CITY, whether the loss or damage results from acts or omissions (negligent or not) of the CONTRACTOR or a third party.

The CONTRACTOR shall indemnify and hold the CITY harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of this Agreement. The CONTRACTOR shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the CITY when applicable, and shall pay all costs and judgments which may issue thereon.

30. **Employment Eligibility.** The CONTRACTOR is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than TWENTY (20) calendar days after

the date of termination. If this contract is terminated for a violation of the statute by the CONTRACTOR, the CONTRACTOR may not be awarded a public contract for a period of ONE (1) year after the date of termination.

31. **Illegal Alien Labor** - CONTRACTOR shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an Agreement with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor is following the terms stated within. The CONTRACTOR nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. CONTRACTOR agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the CONTRACTOR. Failure to meet this requirement may result in termination of the Agreement by the CITY.

32. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

33. **Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

MARION ROCK, INC.

By: _____

Printed: _____

Its: _____
(Title)

CITY OF LEESBURG, FLORIDA

John Christian, Mayor

ATTEST:

J. Andi Purvis, City Clerk

Approved as to form:

Fred A. Morrison, City Attorney

Attachment 'A'
SUPPLEMENTAL CONDITIONS – CONSTRUCTION

1. DEFINITIONS

The following definitions shall apply. Whenever the following terms (or pronouns in place of them) are used in the Contract Documents, the intent and meaning of such terms shall be interpreted as follows:

- a. **City Project Representative:** There shall be authorized representative(s) of the CITY assigned to make all necessary inspections of the work performed by the CONTRACTOR and for such other purposes as outlined in the Contract Documents.
- b. **City Technical Representative:** There may be a designated Project Representative assigned by the CITY to inspect the technical aspects of the project. To insure the project is being constructed as designed.
- c. **Engineer of Record:** The Engineer of Record designated by the CITY following Contract Execution.
- d. **Engineer:** The design professional (engineer, architect, landscape architect or surveyor) designated by the CITY to serve as the design professional representing the CITY.
- e. **Notice to Proceed (NTP):** The official Notice from the CITY to the CONTRACTOR providing the date work may begin and the date the performance period begins. The NTP date will be mutually agreed to at or following the pre-construction meeting. CONTRACTOR shall sign the acknowledgement section of the NTP and return to the Purchasing Division. The NTP shall become a part of the Contract Documents.
- f. **Subcontractor:** Includes only those having a direct contract with the CONTRACTOR and it includes one who furnished material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- g. **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.
- h. **Manual(s):** Equipment documentation meant for the end user/consumer of the equipment. CONTRACTOR shall provide all Manuals to the CITY upon substantial completion. Retainage may not be released until the CITY has received all Manuals relevant to the equipment incorporated into the project.
- i. **Surety:** The corporate body which is bound with and for the CONTRACTOR which is primarily liable and which guarantees the faithful performance of the bid and/or agreement.
- j. **Plans, Drawings and/or Sketches:** Graphic representations of the work to be performed or reproductions thereof.
- k. **Specifications:** Broadly defined, the specifications include all data bound together herein or referenced on the plans, including, but not limited to, General Conditions, Technical Specifications, Special Conditions, Geotechnical Investigation,

Supplemental Conditions (if any), other detailed technical specifications, exhibits and all addenda.

- l. **Defective:** An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion or CITY has taken beneficial use of completed portions).
- m. **Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.
- n. **Substantial Completion:** The Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer as evidenced by Engineer's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.
- o. **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

2. INSPECTION OF WORK

The Project Representative and his representatives shall, at all times, have access to the work whenever it is in preparation or progress and the CONTRACTOR shall provide proper facilities for such access and for inspection. The work will be conducted under the general direction of the Project Representative of the CITY and is subject to inspection by his appointed inspectors to insure compliance with the terms of the contract. No inspector is authorized to change any provisions of the specifications without written authorization of the CITY, nor shall the presence or absence of an inspector relieve the CONTRACTOR from any requirements of the contract.

If the specifications, the Project Representative's instructions, laws, ordinances or any public authority require any work to be specifically tested or approved, the CONTRACTOR shall give the CITY timely notice of its readiness for inspection, and if the inspection is by another authority than the Project Representative, of the date fixed for such inspection. Inspections by the Project Representative will be promptly made, and where practicable at the source of supply. If any work should be covered up without approval or consent of the CITY, it shall, if required by the Project Representative, be uncovered for examination at the CONTRACTOR's expense.

Re-examination of questioned work may be ordered by the Project Representative and, if so ordered, the work shall be uncovered by the CONTRACTOR. If such work is found in accordance with the contract documents, the CITY will pay the cost of re-examination and replacement. If such work is found not in accordance with the contract documents, the CONTRACTOR shall pay such cost.

3. TESTS

The Project Representative will have the right to require all materials to be submitted to test prior to incorporation in the work. In some instances, it may be expedient to make these tests at the source of supply and for this reason it is requested that the CONTRACTOR furnish the source

before incorporating material in the work. This does not in any way obligate the Project Representative to perform tests for acceptance of material and does not relieve the CONTRACTOR of his responsibility to furnish satisfactory material. The CONTRACTOR shall furnish two copies of manufacturer's certificate of compliance with these specifications covering manufactured items incorporated in the work.

All field tests for compaction of earthwork and of material incorporated in the sub grade and base will be performed by technicians of a materials testing laboratory approved by the CITY. All tests performed by the laboratory to ascertain that the material, as placed, meets the required specification will be at the expense of the CONTRACTOR and should be included in the bid items as such.

4. TOOLS, PLANT AND EQUIPMENT

If any time before the commencement or during the progress of the work, tools, plant or equipment appears to the Project Representative to be insufficient, inefficient or inappropriate to secure the quality of work required, or the proper rate of progress, the Project Representative will notify the CITY of such conditions. The Engineer will provide written notification to the CONTRACTOR of CITY's quality and/or schedule concerns. The CONTRACTOR will respond in writing within 5 business days of receiving the CITY's notice and will propose remedial actions to address the quality and/or schedule concerns.

5. COLLECTION AND DISPOSAL OF WASTE

The CONTRACTOR shall collect waste from construction areas and elsewhere; handle hazardous, dangerous, or unsanitary waste materials separately from other waste by containerizing properly; dispose of material in a lawful manner. The CONTRACTOR shall be responsible for the transportation and disposal costs of all waste construction materials.

6. BURNING OF DEBRIS

For any areas where the burning of debris is permitted, the CONTRACTOR will be required to request a permit therefore, from the fire authority having jurisdiction in the area in due advance time, and if such permission is granted he shall rigidly abide by all provisions and requirements of such permit. In no case will burning be permitted until the fire authorities have adequately

checked the size of the pile to be burned, the weather conditions and any other factors which might affect the proper control of the burning operation.

7. MAINTENANCE OF TRAFFIC

Where construction is located in public right of ways, traveled streets and roads, the CONTRACTOR shall exercise extreme care in seeing that sufficient area is provided and kept open for police, fire, ambulance, mail and private vehicular traffic.

The CONTRACTOR shall ensure that each person supervising the selection, placement and maintenance of Traffic Control Devices in the FDOT Work Zone shall be certified by attending an FDOT approved MOT training course. A copy of these certifications shall be submitted to the CITY of Leesburg upon request.

8. PROTECTION AGAINST POLLUTION

The CONTRACTOR shall comply with all legal regulations pertaining to pollution as are applicable to the site and he shall take all measures necessary to assure that no pollution, temporary or permanent, occurs to any lakes or other water areas as a result of runoff from the areas within which he is working.

This shall include the installation of temporary construction turbidity screens or hay bales along the edge of existing wetlands prior to the start of construction. These areas shall be as shown on the plans.

CONTRACTOR shall maintain the fuel storage area in accordance with local, state and federal regulations. Refueling vehicles and refueling techniques shall also comply with all applicable regulations. Clean-up of the fuel storage area shall be as required by the regulations and in accordance with these regulations.

9. TEMPORARY FENCING AND BARRICADES

The CONTRACTOR shall at his cost erect barricades sufficient to prevent injury to persons or damage to property, including the CONTRACTOR's personal property and materials. The CITY shall not be held responsible for the loss, theft, or vandalism of the CONTRACTOR's equipment or other personal property, including construction materials and supplies. Fences shall be constructed to prevent entry of unauthorized persons; cover trenches and holes when not in use; erect barriers at sharp changes in plane more than four (4) feet high. Should construction operations temporarily obstruct road passage, the CONTRACTOR shall at his cost provide suitable flagmen to control vehicular traffic on the road. Permits to use construction equipment on Florida Department of Transportation Right-of-Way shall be secured by the CONTRACTOR prior to actual beginning of work. The CONTRACTOR shall, at his cost, remove all temporary protection from the work site upon completion of the work.

10. WORKMANSHIP, MATERIALS, APPLIANCES, AND EMPLOYEES

All work will be done in a competent and workmanlike manner. All materials, equipment and supplies furnished by the CONTRACTOR for permanent incorporation in the work shall be new

and of quality standards specified. Workmanship shall be first class and the finished product equal to the best-accepted standards of the trade for the category of work performed. It is the CITY's intent to obtain a high-quality job that will operate and function with least maintenance costs. The CONTRACTOR shall, if requested by CITY, furnish satisfactory evidence as to the kind and quality of materials.

Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.

The CONTRACTOR shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Neither party shall employ or hire any employees of the other party without his consent.

11. GENERAL QUALITY AND STANDARDS

To facilitate rapid examination, detailed specifications concerning basic requirements for labor, materials, equipment and/or incidentals to be used on the project are included under the various divisions in as brief a form as is consistent with clarity. The primary concern of the detailed specifications is for standards of performance expected for the finished work.

When in the detailed specifications reference is made to a particular code or specification, the latest edition of said code or specification shall apply.

The interests of the CITY, the CONTRACTOR and others concerned with the work require the inclusion of certain general governing requirements and standards, as a precaution against contingency and to provide for the conditions under which the construction and the administration of the work will be carried out.

General requirements for the quality of the work, when not otherwise covered in more specific detail in the specifications, will be governed by acceptable standards of the trade.

These specifications consider the project as a whole and assume its completion under a general contract. Further, the scope of subcontracts and the quantities of materials and labor supplied to the CONTRACTOR by others are assumed to be matters governed by agreement between the CONTRACTOR and his Subcontractors and suppliers and not by agreement between the CITY and any Subcontractor or suppliers.

Various sections of the construction specifications are intended to govern only the quality of work and/or materials incidental to the particular branch of work mentioned in the section title. Sections are not intended as itemizations of the work materials to be furnished or to limit or define the scope of any subcontract or agreement to furnish material and labor.

The furnishing of all items of material, labor, equipment and/or incidentals necessary to the completion of the work as a whole will be expected when such items are called for on the drawings by diagram, note or schedule, are listed in the specifications, or are reasonably inferred by either or a combination of both.

During the construction operations under this contract, the CITY may elect to contract other work for the project. The CONTRACTOR shall coordinate his operations with those of any other such CONTRACTORS as well as any work of constructing or adjusting utilities by any other authorities, to the end that the least practical handicap to the work of all such CONTRACTORS or authorities will result.

12. PROJECT COORDINATION

The CONTRACTOR shall coordinate construction operations that are dependent upon each other for proper installation, connection and operation. The CONTRACTOR shall make adequate provisions to accommodate items scheduled for later installation.

The CONTRACTOR shall inspect both the substrate and conditions under which the work is to be performed. The CONTRACTOR shall not proceed until unsatisfactory conditions have been corrected in an acceptable manner.

The CONTRACTOR shall inspect materials or equipment immediately upon delivery and again prior to installation. The CONTRACTOR shall reject damaged and defective items.

The CONTRACTOR shall supervise construction activities to ensure that no part of the construction is subject to deleterious exposure during the construction period. Where applicable, such exposures include, but are not limited to, the following: Unprotected storage, Improper shipping and handling, Theft, Vandalism.

13. COORDINATION WITH UTILITY COMPANIES

CONTRACTOR shall coordinate with all utility installations. CONTRACTOR shall notify the appropriate utility companies, in writing, adequately in advance of the time frame set aside for such utility installation. The utility companies referred to herein shall include, but not be limited to, Power, Gas, Telephone, and Cable Television. CONTRACTOR shall coordinate the installation of "sleeves" for the utility companies as may be required.

CONTRACTOR shall supply the CITY with copies of all correspondence notifying the utility companies of his intended schedule of construction and the expected date for their respective utility installations. Written notices shall be sent to the utility companies at sixty (60) days, thirty (30) days and two (2) weeks prior to the time at which the utility installation should begin.

14. SUPERVISION

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the

means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

If the CONTRACTOR, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omissions in the drawing or in layout as given by points and instructions, it shall be his duty to immediately inform the Project Representative, in writing, and the Project Representative will promptly verify the same. Any work done after such discovery, until authorized, will be done at the CONTRACTORS' risk.

15. CONSTRUCTION SUPERINTENDENT

CONTRACTOR shall employ a Construction Superintendent who shall be present on-site or available throughout the duration of the project and shall remain associated with the project until completion unless otherwise requested to be replaced by the CITY. The superintendent shall be experienced in the work required and perform all coordination activities generally conducted by project superintendents including, but not limited to, subcontractor coordination, utility installations, inspections, testing, material deliveries, etc. The superintendent shall be present at the pre-construction meeting and shall remain on the project until completion. The owner reserves the right to request a resume of experience for the superintendent including, but not limited to, requesting references from recent projects. Substitution of superintendents after the start of the work shall be approved by the owner in advance. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

16. WAGE RATES/EQUAL EMPLOYMENT OPPORTUNITY

Wage rates for laborers, mechanics and apprentices shall not be less than those established by the Florida Department of Labor and Employment Security and/or the United States Department of Labor for this work, as may be attached hereto. The CONTRACTOR must insure Equal Employment Opportunity as part of the awarded contract and also subcontracts awarded by the CONTRACTOR.

17. SUBCONTRACTS

The CONTRACTOR shall, as soon as practicable after signing the contract, notify the Project Representative in writing of any changes in the names of subcontractors proposed for the work as listed on the bid form. The CONTRACTOR shall not employ subcontractors, unless they are approved by the Project Representative.

The CONTRACTOR agrees that he is as fully responsible to the CITY for the acts and omissions of his subcontractors and of persons, either directly or indirectly, employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractors and the CITY.

18. PRE-CONSTRUCTION MEETING

The CITY shall schedule a meeting after the Notice of Award. The Project Representative, Engineer, and CONTRACTOR shall attend this mandatory meeting. The following items shall be completed:

- a. Submission of list of Subcontractors, Schedule of Values and Progress Schedule.
- b. Designation of Personnel representing the parties in Contract, and the Engineer.
- c. Use of premises by CITY and the CONTRACTOR.
- d. Survey layout and scheduling.
- e. Security and housekeeping procedures.
- f. Requirements for start-up of equipment.
- g. Inspection and acceptance of equipment put into service during construction period.

At least ten (10) days before submission of the first Application for Payment a conference attended by CONTRACTOR, Engineer and others as appropriate will be held to finalize the schedules submitted by CONTRACTOR. The finalized progress schedule will be acceptable to Engineer as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on Engineer responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereto. The finalized schedule of Shop Drawing submissions will be acceptable to Engineer as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to Engineer as to form and substance.

19. ORDER OF COMPLETION

The CONTRACTOR shall submit at such times as may be requested by the Project Representative, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work with dates on which the CONTRACTOR will start the several parts of the work and estimated dates of completion of the several parts. The CITY retains the right to dictate to the CONTRACTOR the order of completion of the work.

20. MATERIALS AND EQUIPMENT SCHEDULES

As soon as practicable and within ten (10) days after the date of award of contract and before any material or equipment is purchased, the CONTRACTOR will submit to the CITY for approval a complete list, in triplicate, of materials to be incorporated in the work and samples of each listed material. The list shall include catalog numbers, cuts, diagrams; drawings and such other descriptive data as may be required. No consideration will be given to partial lists submitted from time to time. Approval of materials will be based on manufacturers' published ratings. Any materials listed that are not in accordance with the specification requirements may be rejected.

When one or more manufacturer's items are specified, it shall be understood that the item(s) so specified are hereby approved as to suitability and no substitutions will be permitted unless followed by such qualifying phrases as equal "approval equal" or "as approved" in which case the approval of the CITY for items not specified shall be obtained before they may be used.

21. CONTRACTOR'S REQUESTS FOR INTERPRETATION (RFIs)

Should CONTRACTOR be unable to determine from the Contract Documents the exact material, process, or system to be installed; or when the elements of construction are required to occupy the same space (interference); or when an item of Work is described differently at more than one place in the Contract Documents; the CONTRACTOR shall request that the Architect/Engineer (AE), or CITY Representative, make an interpretation of the requirements of the Contract Documents to resolve such matters. CONTRACTOR shall comply with procedures specified herein to make Requests for Interpretation (RFIs).

- a. Submission of RFIs: RFIs shall be prepared and submitted on a form provided by the CITY.
 - i. Forms shall be completely filled in, and if prepared by hand, shall be fully legible after copying by xerographic process.
 - ii. Each RFI shall be given a discrete, consecutive number.
 - iii. Each page of the RFI and each attachments to the RFI shall bear the CITY's project name, project number, date, RFI number and a descriptive title.
 - iv. CONTRACTOR shall sign all RFIs attesting to good faith effort to determine from the Contract Documents the information requested for interpretation. Frivolous RFIs shall be subject to reimbursement from CONTRACTOR to CITY for fees charged by A/E, A/E consultants and other design professionals engaged by the CITY.
- b. Subcontractor-Initiated and Supplier-Initiated RFIs: RFIs from subcontractors and material suppliers shall be submitted through, be reviewed by and be attached to an RFI prepared, signed and submitted by CONTRACTOR. RFIs submitted directly by subcontractors or material suppliers will be returned unanswered to the CONTRACTOR.
 - i. CONTRACTOR shall review all subcontractor- and supplier-initiated RFIs and take actions to resolve issues of coordination, sequencing and layout of the Work.
 - ii. RFIs submitted to request clarification of issues related to means, methods, techniques and sequences of construction or for establishing trade jurisdictions and scopes of subcontracts will be returned without interpretation. Such issues are solely the CONTRACTOR'S responsibility.
 - iii. CONTRACTOR shall be responsible for delays resulting from the necessity to resubmit an RFI due to insufficient or incorrect information presented in the RFI.
- c. Requested Information: CONTRACTOR shall carefully study the Contract Documents to ensure that information sufficient for interpretation of requirements of the Contract Documents is not included. RFIs that request interpretation of requirements clearly indicated in the Contract Documents will be returned without interpretation.
 - i. In all cases in which RFIs are issued to request clarification of issues related to means, methods, techniques and sequences of construction, for example, pipe and duct routing, clearances, specific locations of Work shown diagrammatically, apparent interferences and similar items, the

CONTRACTOR shall furnish all information required for the A/E or CITY's Representative to analyze and/or understand the circumstances causing the RFI and prepare a clarification or direction as to how the CONTRACTOR shall proceed.

- ii. If information included with this type RFI by the CONTRACTOR is insufficient, the RFI will be returned unanswered.
- d. Unacceptable Uses for RFIs: RFIs shall not be used to request the following:
 - i. Approval of submittals
 - ii. Approval of substitutions
 - iii. Changes that entail change in Contract Time and Contract Sum
 - iv. Different methods of performing Work than those indicated in the Contract Drawings and Specifications
- e. Disputed Requirements: In the event the CONTRACTOR believes that a clarification by the CITY's A/E, or Representative, results in additional cost or time, CONTRACTOR shall comply with the method for requesting a Change Order.
- f. RFI Log: CONTRACTOR shall prepare and maintain a log of RFIs, and at any time requested by the CITY's Representative, the CONTRACTOR shall furnish copies of the log showing all outstanding RFIs.
- g. Review Time: Architect/Engineer or CITY Representative (CITY) shall return RFIs to CONTRACTOR and within five (5) calendar days of receipt. RFIs received after 12:00 noon shall be considered received on the next regular working day for the purpose of establishing the start of the five-calendar day response period.

22. SUBMITTAL REQUIREMENTS OF CONTRACTOR

After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to Engineer for review in accordance with the accepted schedule of Shop Drawing submissions, or for other appropriate action if so indicated in the Special Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable Engineer to review the information as required.

CONTRACTOR shall also submit to Engineer for review with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements,

materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

At the time of each submission, CONTRACTOR shall give Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and in addition, shall cause a specific notation to be made on each Shop Drawing submitted to Engineer for review of each such variation.

Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by Engineer, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

Engineer's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called Engineer's attention to each such variation at the time of submission as required by this Article and Engineer has given written review each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review; nor will any review by Engineer relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions herein.

Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to Engineer's review of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

23. CHANGES IN THE WORK

Any Change in the Work will be documented in writing and approved by the CITY in writing. Changes that increase the cost of the work may need to be approved by CITY Commission depending on the dollar value of the increase change order. No work may be performed prior to the change being approved by CITY.

The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without change in the Contract Price.

The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price, shall be delivered in writing to the CITY and the Engineer within fifteen days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five days of such occurrence unless the Engineer allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by the Engineer if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. The Engineer(s) decision shall be final and binding. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- a. where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved, or ii. by mutual acceptance of a lump sum, or
- b. on the basis of the cost of the work plus a CONTRACTOR's fee for overhead and profit.

24. DETAIL DRAWINGS AND INSTRUCTIONS

The CITY will furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions will be consistent with the contract documents, true developments thereof and reasonably inferable therefrom.

25. OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the CITY are the property of the CITY. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to the CITY, at the request of the CITY upon the completion of the work.

26. SURVEYS, PERMITS AND REGULATIONS

The CITY will furnish horizontal and vertical control necessary to layout the work in an orderly and workmanlike manner.

Horizontal Control furnished by the CITY shall consist of adequately marked property corners or offset corners, with dimensions as shown on the drawings. Vertical Control will consist of benchmarks established within the immediate area of the work.

It shall be the responsibility of the CONTRACTOR to furnish all construction layout of the work, including, but not limited to, layout and elevations for the construction and final grade of the site.

The CONTRACTOR shall maintain and preserve all stakes and marks established by the CITY and should such stakes or marks be carelessly or willfully destroyed or damaged by the CONTRACTOR, said stakes or marks shall be replaced by the CITY at the expense of the CONTRACTOR.

The CONTRACTOR will set the horizontal and vertical control only at the beginning of the job as specified above. Interim staking during the job and all staking and layout work not furnished by the CITY as specified above shall be the responsibility of the CONTRACTOR.

The CITY will furnish all personnel and equipment and materials to make such surveys as are necessary to determine the quantities of work performed.

The CITY will furnish environmental permits unless otherwise specified. The CONTRACTOR shall obtain any and all required permits from all appropriate government agencies.

Work permits and licenses necessary for the prosecution of the work shall be secured and paid for by the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be secured and paid for by the CITY unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the CONTRACTOR observes that the drawings and specifications are at variance therewith, he shall promptly notify the CITY in writing and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the CONTRACTOR performs work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the CITY, he shall bear all cost arising there from.

27. ROYALTIES AND PATENTS

There may be a design, device, material or process included in these plans and specifications which may be covered by letters, patent or copyright. Prior to use of any design, device, material or process, or its incorporation into the construction, the CONTRACTOR shall secure indemnity from his subcontractors or material suppliers that will protect and save harmless the CITY from all loss on account thereof.

The CONTRACTOR shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the CITY harmless from loss on account thereof, except that the CITY shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the CONTRACTOR has information that the process or article specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the CITY.

28. PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all his work from damage and shall protect the CITY's property from injury or loss arising in connection with this contract. The CONTRACTOR shall at all times protect all public and privately-owned property, structures, utilities, and work of any kind against damage or interruption of service which may result from the operations of the CONTRACTOR. Damage or interruption to service resulting from failure to do so shall be repaired or restored by or at the expense of the CONTRACTOR

except such as may be directly due to errors in the contract documents or caused by the agents or employees of the CITY.

29. DEDUCTIONS FOR UNCORRECTED WORK

If the Project Representative deems it inexpedient to correct work injured or done, not in accordance with the contract, an equitable deduction from the contract price will be made therefore.

30. DELAYS AND EXTENSION OF TIME

If the CONTRACTOR be delayed at any time, in the progress of the work by an act of neglect of the CITY or of his employees, or by any other CONTRACTOR employed by the CITY or by Changes ordered in the work or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the CONTRACTOR's control, or by delay authorized by the Project Representative, or by any cause which the Project Representative may decide to justify the delay, then the time of completion will be extended for any such reasonable time as the Project Representative may decide.

No such extension will be made for delay occurring more than seven (7) days before claim therefore is made in writing to the CITY. In the case of a continuing cause or delay, only one claim is necessary.

If no schedule or agreement stating the dates upon which drawings shall be furnished is made, then no claim for delay will be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claims be reasonable.

31. CORRECTION OF WORK BEFORE FINAL PAYMENTS

The CONTRACTOR shall promptly remove from the premises all materials condemned by the Project Representative as failing to conform to the contract, whether incorporated in the work or not, and the CONTRACTOR shall promptly replace and re-execute his own work in accordance with the contract and without expense to the CITY and shall bear the expense of making good all work of other CONTRACTORS destroyed or damaged by such removal or replacement.

If the CONTRACTOR does not correct such condemned work and material within a reasonable time fixed by written notice, the CITY may correct it at the expense of the CONTRACTOR. If the CONTRACTOR does not pay the expense of such correction within three (3) days thereafter, the CITY may, upon three (3) days written notice, deduct all the cost and expenses that should have been borne by the CONTRACTOR.

32. THE CITY'S RIGHT TO DO WORK

If the CONTRACTOR should neglect to prosecute the work properly or fail to perform any provision of this contract, the CITY after three (3) days written notice to the CONTRACTOR, may, without prejudice to any other remedy he may have, make good such deficiencies at the CONTRACTOR's expense.

33. SUSPENSION OF WORK

The CITY may at any time suspend the work or any part thereof by giving five (5) days notice to the CONTRACTOR in writing. The work shall be resumed by the CONTRACTOR within ten (10) days after the date fixed in a written notice to resume work from the

CITY to the CONTRACTOR. The CITY will reimburse the CONTRACTOR for expense incurred by the CONTRACTOR in connection with the work under this contract as a result of such suspension unless the suspension was recommended to the CITY by the Project Representative to enforce the contract or for any violation of the contract.

34. REMOVAL OF EQUIPMENT

In the case of annulment of this contract before completion, from any cause whatever, the CONTRACTOR, if notified to do so by the CITY, shall promptly remove any part or all of his equipment and supplies from the property of the CITY, failing which, the CITY will have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

35. USE OF COMPLETED PORTIONS

Use by CITY of any finished part of the Work, which has specifically been identified in the Contract Documents, or which CITY, Engineer and CONTRACTOR agree constitutes a separately functioning and useable part of the Work that can be used by CITY without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

- a. CITY at any time may request CONTRACTOR in writing to permit CITY to use any such part of the Work which CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to CITY and Engineer that said part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify CITY and Engineer in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, CITY, CONTRACTOR and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify CITY and CONTRACTOR in writing giving the reasons therefore. If Engineer considers that part of the Work to be substantially complete, the provisions of Substantial Completion will apply with respect to certification of that part of the Work and the division of responsibility in respect thereof and access thereto.
- b. CITY may at any time request CONTRACTOR in writing to permit CITY to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to Engineer and within a reasonable time thereafter CITY, CONTRACTOR and Engineer shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If

CONTRACTOR does not object in writing to CITY and Engineer that such part of the Work is not ready for separate operation by CITY, Engineer will finalize the list of items to be completed or corrected and will deliver such list to CITY and CONTRACTOR together, with a written recommendation as to the division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work, which will become binding upon CITY and CONTRACTOR at the time when CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed Engineer). During such operation and prior to Substantial Completion of such part of the Work, CITY shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

- c. If CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with this Article; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

36. PROMPT PAYMENT

It is the policy of the CITY that payment for all purchases by the CITY shall be made in a timely manner and that interest payments will be made on late payments in accordance with Part VII, Chapter 218, Florida Statutes, known as the Florida Prompt Payment Act.

37. APPLICATION FOR PAYMENT

The CONTRACTOR shall submit to the CITY, at least 20 days before the date established for each progress payment (but not more often than once a month), an Application for Payment filled out and signed by CONTRACTOR covering the work completed as of the date of the Application. Upon review and approval by the CITY and Engineer (if applicable).

The retained percentage (retainage) amount with respect to the progress payments shall initially be 10% unless stated otherwise in the Construction Services Agreement. Retainage amounts and retainage process shall be governed by Florida Statute 255.078 – Public Construction Retainage.

CONTRACTOR shall, before any draw is issued, provide a sworn statement to CITY attesting that all services, materials and labor, furnished to the project to the date of the draw request have been paid for in full, or listing the amounts due for such services, materials and labor, and if any amounts are listed as being due, the CITY shall have the right to pay those amounts directly to the persons to whom they are due, with the balance of the draw amount to be paid to CONTRACTOR, and if the draw is insufficient to pay the amounts then due for services, materials and labor, the CITY shall pay those to whom such amounts are due on a pro rata basis

until the draw is exhausted, and any remaining amounts due others shall be paid first out the next draw due.

The CITY shall not be required to issue progress payments pursuant to the draw schedule until the CITY has verified, by on-site inspection, that construction has in fact progressed to the stage at which a draw is required and that the work done and materials furnished are in compliance with the Contract Documents, and all applicable technical codes. The final draw due upon “completion” shall not be payable until the CITY, its Project Representative or Engineer of Record has determined the work has been completed in accordance with the Contract Documents and a Certificate of Completion has been issued by the CITY.

38. PAYMENTS WITHHELD

The CITY may withhold or, on account of subsequently discovered evidence, recover the whole or part of any payment to such an extent as may be necessary to protect the CITY from loss on account of—

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the CONTRACTOR to make payments properly to subcontractors or for materials or labor.
- d. The Project Representative's opinion that the contract cannot be completed for the balance then unpaid.
- e. Damage to another CONTRACTOR.
- f. Failure to maintain adequate progress. vii. Damage to the building resulting from the negligence of the CONTRACTOR.

When the above grounds are removed, payment will be made for amounts withheld because of them.

39. FINAL PAYMENT APPLICATION

Administrative actions and submittals that must precede or coincide with submittal of the final payment Application for Payment include the following:

- a. Completion of Project closeout requirements.
- b. Completion of items specified for completion after Substantial Completion.
- c. Assurance that unsettled claims will be settled.
- d. Transmittal of required project construction records to CITY.
- e. Final Clean Up as outlined in these General Conditions

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Engineer will make a final inspection with CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

After CONTRACTOR has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of

inspection, marked-up record documents and other documents--all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions under Waiver of Claims), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by CITY, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY or CITY's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to CITY to indemnify CITY against any Lien.

If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents, Engineer is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application to CITY for payment. Thereupon Engineer will give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions found under "Waiver of Claims". Otherwise, Engineer will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, and with Engineer's recommendation and notice of acceptability, the amount recommended by Engineer will become due and will be paid by CITY to CONTRACTOR.

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if Engineer so confirms, CITY shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

40. CONTRACTOR'S CONTINUING OBLIGATION

CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by

Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by Engineer, nor any correction of defective Work by CITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided under Waiver of Claims)

41. DAMAGES

Any claim for damage arising under a resulting Agreement shall be made in writing to the party liable within ten (10) days after the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials.

42. EQUIPMENT STARTUP

Equipment startup shall be in accordance of the manufacturer's recommendations, and as required to demonstrate performance to the Engineer and CITY in accordance with the specifications. The CONTRACTOR shall provide 30-days notice to the Engineer and CITY of the date on which all equipment and systems will be ready for startup. The startup date shall be arranged as required by the CITY's operational schedule with consideration of the schedule needs of the Engineer and CONTRACTOR.

43. COMPLETION OF WORK

The CONTRACTOR shall be considered "substantially complete" when the equipment and systems have been used without failure for seven (7) continuous days, and in the opinion of the CITY, it's Project Representative or Engineer of Record, all work has been completed in general accordance with the plans and specifications and all test reports, inspections, etc. have been completed and delivered to the Engineer. Substantial completion shall also mean that degree of completion which allows the CITY to occupy and use the facilities. When the Engineer deems the work to be "substantially complete" he shall indicate this to the CITY in writing with copies to the CONTRACTOR. The date of contract completion shall be the same date at which the CONTRACTOR is considered substantially complete by the Engineer.

44. ACCEPTANCE OF FINISHED WORK

The CITY shall make final acceptance inspection of the Project covered by this Contract when the Project is completed and finished in all respects in accordance with the Contract Documents. CONTRACTOR shall furnish to the Engineer or CITY Representative a complete set of As-Built drawings. These drawings shall be prepared by a licensed Surveyor in the State of Florida and shall be submitted to the Engineer within five (5) days following the completion of the work.

45. FINAL CLEAN UP

The CONTRACTOR shall complete all cleaning operations before requesting final inspection.

The CONTRACTOR shall, as directed by the Project Representative, remove from the CITY's property and from all public and private property, at his own expense, all temporary structures, rubbish, and waste materials resulting from his operation.

The CONTRACTOR shall remove temporary protection and facilities installed for protection of the work during construction.

The CONTRACTOR shall comply with all regulations of authorities having jurisdiction and safety standards for cleaning. The CONTRACTOR shall not burn waste materials. The CONTRACTOR will not discharge volatile, harmful or dangerous materials into drainage systems. The CONTRACTOR will remove all waste materials from the site and dispose of in a lawful manner. Materials of value remaining after completion of associated work will become the owner's property. The CONTRACTOR will arrange for the disposition of these materials as directed by the CITY.

The CONTRACTOR shall rake the grounds that are neither paved nor planted to a smooth, even textured surface.

46. TREES

It shall be the responsibility of the CONTRACTOR to protect all trees within the limits of the work and as designated by the Project Representative.

47. GUARANTY

CONTRACTOR warrants and guarantees to CITY that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in the paragraph in this section labeled 'Inspections, Correction, Removal Of Defective Work'.

All equipment, materials and installation and workmanship furnished by the CONTRACTOR under the terms of the Contract, shall be guaranteed by the CONTRACTOR against defective workmanship, mechanical and physical defects, leakage, breakage and other damages and failure, under normal operation for a period of two (2) years or as otherwise specified in the Technical Specifications and after the date of acceptance thereof by the CITY, and each item of equipment or materials and installation proving to be defective within the specified period of guaranty shall be replaced, without cost to the CITY, by the CONTRACTOR or by the Surety. The period of guaranty of such replacement shall be from and after the date of final acceptance of the Project by the CITY, provided however, that where any item or equipment or material comes with a manufacturer's warranty of two (2) years or longer, that warranty shall take precedence over the warranty of CONTRACTOR hereunder.

48. INDEMNITY

The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and defend, indemnify, and save harmless the CITY and Engineer or any

of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY and Engineer or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR's duties under the Contract, or through the negligence of the CONTRACTOR in the performance of its duties under this Contract, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants or subcontractors.

Provided, however, if this Contract is deemed, by a court of competent jurisdiction, to be a construction contract for the purposes of Section 725.06, Florida Statutes, any obligation of the CONTRACTOR to defend, indemnify or hold harmless an CITY and Engineer shall be limited to an obligation to indemnify and hold harmless the CITY and Engineer, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Contract.

49. ASSIGNMENT

Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any moneys due, or to become due to him hereunder, without the previous written consent of the Project Representative.

50. RIGHTS OF VARIOUS INTERESTS

Wherever work being done by the CITY's forces, or by the other CONTRACTORs, is contiguous to work covered by this contract, the respective rights of the various interests involved will be established by the Project Representative, to secure the completion of the various portions of the work in general harmony.

51. SEPARATE CONTRACTS

The CITY reserves the right to let other contracts in connection with this work. The CONTRACTOR shall afford other CONTRACTORs reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly conduct and coordinate his work with theirs.

If any part of the CONTRACTOR's work depends, for proper execution or results upon the work of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the Project Representative any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other CONTRACTOR's work as fit and proper for the reception of his work, except as to defects which may develop in the other CONTRACTOR's work after the execution of the work.

To insure the proper execution of his subsequent work, the CONTRACTOR shall measure work already in place and shall at once report to the Project Representative any discrepancy between the executed work and the drawings.

52. LANDS FOR WORK

The CITY will provide the lands upon which the work under this contract is to be done, except that the CONTRACTOR shall provide land required for the erection of temporary construction facilities and storage of his material, together with right of access to same.

53. ACCESS TO RECORDS

The CITY, the Florida Department of State, or any of their duly authorized representatives shall have access to any books, documents, papers or any other records prepared by the CONTRACTOR that are directly pertinent to the work produced under this Agreement for making audit, examination, excerpts and transcription. Such records will be maintained for five (5) years after the completion of the work and until claims or audit findings have been resolved which were initiated prior to the expiration of the five (5) year period.

54. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS

The Agreement shall be signed in quadruplicate by the CITY and the CONTRACTOR. The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of CITY, CONTRACTOR or Engineer, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Engineer, or any of Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of these Supplemental Conditions. Clarifications and interpretations of the Contract Documents shall be issued by Engineer.

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to Engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or

clarification from Engineer; however, CONTRACTOR shall not be liable to CITY or Engineer for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

55. CONTRACTOR'S UNDERSTANDING

CONTRACTOR has visited the site, has called for utility locates and has familiarized itself with the local conditions under which the work is to be performed, both underground and above ground and both on and off premises and has correlated these observations with the requirements of the proposed contract documents; all as considered necessary or pertinent to the work, and any failure to thus make all such prior investigations and studies shall in no way act as a waiver of any of the terms of the contract. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained

56. FAMILIARITY WITH LAWS

The CONTRACTOR is required to be familiar with all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the CONTRACTOR will in no way relieve him from responsibility.

57. SALES TAX

The CONTRACTOR is required to pay Florida sales and use taxes on all materials purchased for this project unless otherwise specified in the document. All Florida sales and use taxes will be included in the submitted bid price(s).

58. CLARIFICATIONS AND INTERPRETATIONS OF CONTRACT DOCUMENTS

It is the duty of the CONTRACTOR to notify the Engineer, in writing, in the event of any doubt or question as to the true meaning of any provision in the Contract Documents. The Engineer's decision thereon shall be final. Annotated dimensions on drawings shall govern and work not dimensioned shall be as clarified by the Engineer. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Materials or work described in words which have a well-known technical or trade meaning shall be deemed to refer to such recognized standard.

Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time then CONTRACTOR shall notify CITY in accordance with the Agreement.

Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims in respect of changes in the

Contract Price or Contract Time will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render writing within a reasonable time. Written notice of each such claim, dispute and other matters will be delivered by the claimant to Engineer and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within sixty days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data in support of the claim.

When functioning as interpreter and judge under this Article, Engineer will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant this Article with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as permitted by the Agreement.) will be a condition precedent to any exercise by CITY or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

59. LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

Neither Engineer's authority to act nor any decision made by Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating other-wise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of this Article.

Engineer will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

Engineer will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

60. SAFETY AND PRECAUTION

CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- a. all employees on the Work and other persons and organizations who may be affected thereby;
- b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and iii. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph caused, directly or in this Article directly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to CITY and CONTRACTOR that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to CITY.

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from Engineer or CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give

Engineer prompt written notice that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Engineer determines that a change in the

Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

61. RECORD DOCUMENTS

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, reviewed Shop Drawings, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all reviewed samples and a counterpart of all reviewed Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents or as-builts, samples and Shop Drawings will be delivered to Engineer for CITY. Upon delivery of such documents to Engineer, the CONTRACTOR shall provide a written certification, signed and dated, that all documents accurately and completely reflect all deviations from or changes in the original Contract Documents made during construction of the project.

Record documents shall be up-to-date and available for review by the resident project representative prior to each application for progress payment. Payment will not be made for construction of items not shown on the record documents.

These requirements also supplement those of Item 66. Not less than two percent (2%) of the contract price shall be retained until correct record drawings, specifications, addenda, modifications and shop drawings are delivered to and reviewed by the Engineer.

62. PHYSICAL CONDITIONS-UNDERGROUND FACILITIES

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site are based on information and data furnished to CITY or Engineer by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- a. CITY and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
- b. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

The word facility as used in this subsection titled "Utilities" includes any pipe conveying gases or liquids and appurtenances attached thereto; cables, conduits, wires, ducts and appurtenances; poles and appurtenances; any of which may be buried below grade or installed at or above grade level. A facility excludes irrigation pipes, service connections and traffic signal wiring. A service connection is a pipe (excluding irrigation pipes), cable, wire, duct or conduit that is

intended to connect a facility with a user. The word Utility as used in this subsection titled "Utilities" refers to the entity having legal ownership of the facility, service connection, irrigation pipe, or traffic signal wiring.

The Engineer has endeavored to determine the existence of underground facilities at the site of the work from the records of the utilities with known facilities in the vicinity of the work. The position of these facilities as derived from such records is shown on the plans. Service connections, irrigation pipes, and traffic signal wiring may not be shown on the plans. The CONTRACTOR shall make his own investigations, including exploratory excavations and contact with Utilities, to determine the exact locations and type of existing facilities, service connections, irrigation pipes, and traffic signal wiring prior to commencing work in the area and shall be responsible for any damage thereto.

Damage, injury, or loss resulting in whole or in part from the CONTRACTOR's failure to locate and preserve a facility, service connection, irrigation pipe, or traffic signal wiring shall under no circumstances be deemed attributable to the fault of the Drawings or Specifications or to the acts or omissions of the CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable.

With respect to underground facilities, no claim for a change in the contract price may be allowed unless the CONTRACTOR discovers an underground facility which is not indicated or referred to in the Contract Documents or which is in a position differing materially and significantly from that indicated or referred to in the Contract Documents. If such discovery is made, the CONTRACTOR shall promptly notify in writing the CITY, Engineer and the Utility. The CITY may make changes in the alignment and grade of the work.

At no additional cost to the CITY, the CONTRACTOR shall replace, remove, relocate, protect, or temporarily maintain a facility which is not in a position differing materially and significantly from that indicated or referred to in the Contract Documents. At no additional cost to the CITY, the CONTRACTOR shall adjust the top elevation of all valve boxes and manholes to match the finish grade or pavement surface and shall replace, remove, relocate, protect, or temporarily maintain all service connections, irrigation pipes, and traffic signal wiring. The work on the facility, service connection, irrigation pipe or traffic signal wiring shall be done in a manner satisfactory to the Utility, it being understood that the Utility has the option of doing such work with his own forces, or permitting the work to be done by the CONTRACTOR.

63. PHYSICAL CONDITIONS

- a. Exploration and Reports: Reference is made in the Special Conditions to those reports of exploration and tests of subsurface conditions at the site that have been utilized by Engineer in preparation of the Contract Documents. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.
- b. Unforeseen Conditions: CONTRACTOR shall promptly notify CITY and Engineer in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract

Documents. Engineer will promptly review those conditions and advise CITY in writing if further investigation or tests are necessary.

Promptly thereafter, CITY shall obtain the necessary additional investigations and tests and furnish copies to Engineer and CONTRACTOR. If Engineer finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by CONTRACTOR, a Change Order shall be issued incorporating the necessary revisions.

64. REVIEW OF APPLICATION FOR PROGRESS PAYMENT

Engineer will, within ten days after receipt of each Application for Payment, to either indicate in writing a recommendation of payment and present the Application to CITY, or return the Application to CONTRACTOR indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

Ten (10) days after presentation of the Application for Payment with Engineer's recommendation, the amount recommended will become due and when due will be paid by CITY to CONTRACTOR.

Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to CITY, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by CITY or CITY to withhold payment to CONTRACTOR.

Engineer's recommendation of final payment will constitute an additional representation by Engineer to CITY that the conditions precedent to CONTRACTOR's being entitled to final payment have been fulfilled.

Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to CITY. Engineer may also refuse

to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously recommended; to such extent as may be necessary in Engineer's opinion to protect CITY from loss.

CITY may refuse to make payment of the full amount recommended by Engineer because claims have been made against CITY on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling CITY to a set-off against the amount recommended, but CITY must give CONTRACTOR immediate written notice (with a copy to Engineer) stating the reasons for such action.

65. SUBSTANTIAL COMPLETION

When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify CITY and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, CITY, CONTRACTOR and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify CONTRACTOR in writing giving the reasons therefore. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to CITY a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. CITY shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within fourteen days after submission of the tentative certificate to CITY notify CONTRACTOR in writing, stating the reasons therefore. If, after consideration of CITY's objections, Engineer considers the Work substantially complete, Engineer will within said fourteen days execute and deliver to CITY and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from CITY. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to CITY and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless CITY and CONTRACTOR agree otherwise in writing and so inform Engineer prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendations will be binding on CITY and CONTRACTOR until final payment.

CITY shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

66. INSPECTIONS, CORRECTION, REMOVAL OF DEFECTIVE WORK

Engineer and Engineer's representatives, other representatives of CITY, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

CONTRACTOR shall give Engineer timely notice of readiness of the Work for all required inspections or tests.

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with CITY's or Engineer's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by CITY (unless otherwise specified).

All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to CITY and CONTRACTOR (or by Engineer if so specified).

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given Engineer timely notice of CONTRACTOR's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

Neither observations by Engineer nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at CONTRACTOR's expense.

If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, CONTRACTOR, at Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim

therefore as provided in Special Conditions. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Special Conditions.

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.

If required by Engineer, CONTRACTOR shall promptly either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

67. ACCEPTANCE OF DEFECTIVE WORK; CORRECTION OF DEFECTIVE WORK BY THE CITY

If, instead of requiring correction or removal and replacement of defective Work, CITY (and, prior to Engineer's recommendation of final payment) prefers to accept it, CITY may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to CITY's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to CITY.

If CONTRACTOR fails within a reasonable time after written notice of Engineer to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, CITY may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and

incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow CITY, CITY's representatives, agents and employees such access to the site as may be necessary to enable CITY to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of CITY in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by Engineer, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by CITY of CITY's rights and remedies hereunder.

68. ARBITRATION

Before bringing any action in any court of competent jurisdiction pertaining to any claim, dispute or other matter in question arising out of or relating to the Contract Documents or the breach thereof, in an amount less than \$25,000, except for claims which have been waived by the making and acceptance of final payment, the claimant/objector (Party A) shall first offer to arbitrate the question(s) with the other party to the contract (Party B) by notifying him in writing and setting forth in such notice the question(s) to be arbitrated.

Party B can select to arbitrate or not. If Party B agrees to arbitrate he shall so advise Party A in writing within ten days after receipt of Party A's notice. Notice by Party B that he does not wish to arbitrate or failure of Party B to notify Party A within the ten-day period will give Party A the right to institute a court action.

If Party B agrees to arbitrate, the arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association except as modified herein. In such event, the agreement to arbitrate shall be specifically enforceable under the provisions of the Florida Arbitration Code, S682, Fla. Stat., as it may be from time to time amended. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

If Party B agrees to arbitrate, then Party A shall file its notice of demand for arbitration in writing with Party B and with the American Arbitration Association, and a copy shall be filed with the Engineer. Notice of demand for arbitration shall be served on the parties referred to herein no later than thirty days from the date Party B agrees to arbitrate the issues in question.

Failure to serve the notice of demand for arbitration shall constitute a waiver and abandonment of the claims for which arbitration is sought. Notice of demand for arbitration shall in no event

be made on any claim, dispute or other matter in questions which would be barred by the applicable statute of limitations.

If the dollar amount of the claim exceeds \$25,000, arbitration may only be utilized if both Party A and party B agree to arbitrate.

The CONTRACTOR shall carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

The Florida Rules of Civil Procedure pertaining to discovery shall apply to both parties during arbitration, and, at the CITY's sole option, any and all arbitration arising out of or relating to any of the Contract Documents or any breach thereof shall include by consolidation, joinder, or joint filing any additional person or entity not a party to this Agreement to the extent necessary for the final resolution of the matter in controversy.

At least one of the members of the arbitration panel must be an attorney licensed to practice law in the State of Florida.

The surety shall be bound by the arbitration award to the same extent as the CONTRACTOR is bound.

The arbitration panel shall submit a written opinion with findings of fact and conclusions of law stating the basis for the decision made, and including an award of arbitration that may be confirmed by a court of competent jurisdiction.

Unless CITY agrees to the contrary, the location of any and all arbitration proceedings shall be in Lake County, Florida.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.2.

Meeting Date: May 24, 2021

From: Mike Thornton, (Purchasing Manager), Cliff Kelsey, (Public Works Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a construction services agreement with U.S. Water Services Corporation for the construction of a new gravity sewer main, allowing the abandonment of sewer mains that currently run under a private building between Pamela and Hill Streets for an amount of \$191,635.10; and providing an effective date.

Staff Recommendation:

Staff recommends award of Invitation for Bid (ITB) 210171 to U.S. Water Services Corporation, and approve the resolution authorizing execution of the Construction Services Agreement for an amount of \$178,931.00.

Analysis:

Currently there are gravity sewer lines that run underneath a private building (church) located at 1111 Pamela Street. The sewer lines were installed in utility right of ways before the building was constructed. The purpose of this project is to install new sanitary gravity sewer lines around the building and then abandon the existing sewer lines in place by filling them with flowable concrete. Completing this project will remove the potential of the lines failing under the building and allow the City utility to service the sewer lines when necessary.

Procurement Analysis:

On March 29, 2021 the Procurement Division issued Invitation for Bids (IFB) 210171 for the Gravity Main - Pamela Street. On April 22, 2021 the City received three bid responses. A summary of the bid responses is provided here. Procurement staff reviewed the bid responses for responsiveness and have deemed U.S. Water Services Corporation a responsible bidder submitting the lowest responsive bid. Staff recommends award to U.S. Water Services Corporation. The City's Local Vendor Preference policy did not factor into the determination of the low bidder as the low bidder qualifies as a Tier I Local Vendor.

SUMMARY OF BIDS

<u>BIDDER NAME</u>	<u>BIDDER LOCATION</u>	<u>TOTAL BID AMOUNT</u>
U.S. Water Services Corporation	New Port Richey, FL	\$178,931.00

	(office in Leesburg)	
Cathcart Construction, Co.	Winter Springs, FL	\$297,200.00
DB Civil Construction, LLC	St. Augustine, FL	\$449,900.00

Procurement staff did identify the bid submitted by U.S. Water Services Corporation as an Abnormally Low Bid (ALB). Staff applied the City's procedure for verification of what appears to be an ALB. The Bidder was sent a document requesting they review their bid amount and affirm that they can complete the project for their bid amount; which U.S. Water Services Corporation did. Their affirmation is attached.

Options:

1. Approve the resolution authorizing execution of the Construction Services Agreement with U.S. Water Services Corporation for an amount of \$178,931; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

Funds are specifically budgeted for this project.

Account No.	044-4099-535.63-10
Project No.	440002
WF No.	WF1118712 / 001
Requisition	53234
Budget	\$178,931.00
Available	\$178,931.00

Submission Date and Time: 5/19/2021 1:57:33 PM

RESOLUTION NO. _____

RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONSTRUCTION SERVICES AGREEMENT WITH U.S. WATER SERVICES CORPORATION FOR THE CONSTRUCTION OF A NEW GRAVITY SEWER MAIN, ALLOWING THE ABANDONMENT OF SEWER MAINS THAT CURRENTLY RUN UNDER A PRIVATE BUILDING BETWEEN PAMELA AND HILL STREETS FOR AN AMOUNT OF \$191,635.10; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an agreement with U.S. SERVICE WATER CORPORATION whose address is 4939 Cross Bayou Boulevard, New Port Richey, Florida 34652 for construction services to install new sewer lines and abandon old lines pursuant to Invitation for Bid 210171.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 24th day of May 2021.

Mayor

ATTEST:

City Clerk

**FINAL DETAILED BID TABULATION
INVITATION FOR BID 210171
GRAVITY MAIN - PAMELA STREET**

Bidder Name:	US WATER SERVICES CORP	CATHCART CONST. COMPAN LLC	DB CIVIL CONST., LLC
Home Office Location:	New Port Richey (office in Leesburg)	Oviedo, FL	St. Augustine, FL
BID ITEM DESCRIPTION	BID AMOUNT	BID AMOUNT	BID AMOUNT
MOBILIZATION AND DEMOBILIZATION	\$2,900.00	\$25,000.00	\$15,000.00
GENERAL CONDITIONS	\$17,282.00	\$20,000.00	\$30,000.00
MAINTENANCE OF TRAFFIC	\$4,012.00	\$3,000.00	\$4,000.00
SILT FENCE/EROSION CONTROL	\$3,526.00	\$2,200.00	\$2,500.00
SURVEYING	\$4,973.00	\$3,200.00	\$5,000.00
DEMOLITION	\$17,357.00	\$2,600.00	\$19,000.00
FENCE	\$14,334.00	\$6,200.00	\$5,000.00
RESTORATION	\$42,668.00	\$10,000.00	\$70,000.00
SANITARY SEWER AND MANHOLES	\$58,338.00	\$200,000.00	\$255,000.00
ABANDON SEWERS	\$13,541.00	\$25,000.00	\$44,400.00
TOTAL BASE BID AMOUNT:	\$178,931.00	\$297,200.00	\$449,900.00
Local Vendor Preference - Tier I-5%	\$187,877.55	Not Applicable	Not Applicable
Local Vendor Preference - Tier II-2%	\$191,635.10	Not Applicable	Not Applicable
TIME FOR COMPLETION			
Number of CALENDAR DAYS to begin work after NTP:	30	30	60
Number of CALENDAR DAYS to completion after NTP:	120	120	120
BID RESPONSE RESPONSIVENESS REVIEW			
IS THE BIDDER DETERMINED TO BE RESPONSIBLE	YES	YES	YES
IS THE BIDDER DETERMINED TO BE RESPONSIVE	YES	YES	YES
Contractor License Number	CUC1223914	CUC057230	CUC1224644
Meets Contractor License Requirement	Yes	Yes	Yes
Contractors License Verified on DBPR	Yes	Yes	Yes
Claims Local Vendor Preference	Tier I	None	None
Project References	Yes	Yes	Yes
Scurtinized companies Certification	Yes	Yes	Yes
Bid Guarantee	Not Applicable	Not Applicable	Not Applicable
Conflict of Interest	None	None	None
Acknowledged Revisions Published Answers Addenda	Yes	Yes	Yes
Exceptions Taken	None	None	None
Bidders Certification / Signature	Yes	Yes	Yes

Detailed Bid Tabulation has been reviewed and approved by:



Mike Thornton, CPPO - Purchasing Manager



Procurement Division
204 N. 5th Street
Leesburg, Florida 34748
Phone: (352)728-9880 | e-mail: purch@leesburgflorida.gov

VIA ELECTRONIC MAIL

April 27, 2021

US Water Services Corporation
Attn: Christina Crego, Bid Administrator
4939 Cross Bayou Boulevard
New Port Richey, Florida 34652
Email: ccrego@uswatercorp.net

CONTRACTORS AFFIRMATION OF BID RESPONSE

Solicitation Name: **210171 – GRAVITY MAIN – PAMELA STREET**

In reviewing bid responses to the Solicitation referenced above, the City has identified your bid response of \$178,931.00 to be significantly lower than the next lowest bid amount.

The City is performing its due diligence to verify the accuracy of your bid and your full understanding of the Scope of Work. We are using this process to determine if your bid is responsive and your company responsible. We want to confirm you understand the Scope of Work and your costs represent all costs necessary to complete the project per the Solicitation specifications. The City requests you review the following information, City Observations, and respond accordingly to the questions that follow.

City Observations

- Your detailed bid amount for 'Sanitary Sewer and Manholes is one fourth the amount bid by other bidders and less than our engineer's opinion of costs for that item.

Affirmation of Bid Response

My signature below represents my affirmation of (please check one):



The bid amount of \$178,931.00 submitted in response to IFB 210171 is accurate and represents all costs for work and materials necessary to complete the work.



The bid amount of \$178,931.00 submitted in response to IFB 210171 is NOT accurate and contains an error(s) or omission(s). My company cannot perform the work for the amount bid. I request to withdraw my bid from consideration of award.

Christina R. Crego
Christina R. Crego (Apr 28, 2021 10:25 EDT)

Signature

Project Administrator

Title

Leesburg Bid Amount Verification

Final Audit Report

2021-04-28

Created:	2021-04-27
By:	Mike Thornton (mike.thornton@leesburgflorida.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAABm4xfJ-FCZJQyPLu8_XwBan8DJLgt0MO

"Leesburg Bid Amount Verification" History

-  Document created by Mike Thornton (mike.thornton@leesburgflorida.gov)
2021-04-27 - 7:24:41 PM GMT- IP address: 8.26.112.25
-  Document emailed to Christina R. Crego (ccrego@uswatercorp.net) for signature
2021-04-27 - 7:26:50 PM GMT
-  Email viewed by Christina R. Crego (ccrego@uswatercorp.net)
2021-04-27 - 8:33:52 PM GMT- IP address: 75.114.68.130
-  Document e-signed by Christina R. Crego (ccrego@uswatercorp.net)
Signature Date: 2021-04-28 - 2:25:11 PM GMT - Time Source: server- IP address: 75.114.68.130
-  Agreement completed.
2021-04-28 - 2:25:11 PM GMT

AGREEMENT FOR CONSTRUCTION SERVICES

THIS AGREEMENT is made as of the 24th day of May in the year 2021, between The City of Leesburg, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY”), and **U. S. WATER SERVICES CORPORATION** whose address is 4939 Cross Bayou Boulevard, New Port Richey, FL 34652 (hereinafter referred to as the “CONTRACTOR”).

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. **Contract Documents.** The following documents and information are incorporated by reference and made part hereof; and shall comprise the Contract Documents.
 - a. This Agreement; and
 - b. Invitation for Bid (IFB) 210171- Gravity Main – Pamela Street in its entirety; and
 - c. The Professional Drawings titled Pamela Street Sewer Improvements
 - d. Schedule of Contract Items included as Attachment ‘A’; and
 - e. Supplemental Conditions included as Attachment ‘B’; and
 - f. The CONTRACTOR’S response to IFB 210171 made electronically on April 22nd, 2021.
2. **Scope of Services.** The CONTRACTOR shall furnish the following services generally described as the “**GRAVITY MAIN- PAMELA STREET**” to the CITY as listed in Invitation for Bid 210171. Nothing herein shall limit the CITY’S right to obtain bids or proposals for services from other contractors for same or similar work.
3. **Total Construction Cost.** The CONTRACTOR shall perform the Services for a total price not to exceed **\$191,635.10**. The cost of these services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price.
4. **Labor and Materials.** The CONTRACTOR shall furnish all labor, material and equipment necessary for satisfactory contract performance. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the CITY’s representative.
5. **Professional License.** The CONTRACTOR holds a Utility and Excavation CUC1223914 number General Contractor CGC003307 issued by the State of Florida. The name of the Qualifying Agent is Christina Crego. CONTRACTOR must maintain this license during the full duration of this Agreement.

6. **Term of Agreement.** This Agreement shall commence upon the date of execution and shall remain in effect until such time as the contracted services have been completed, and accepted by the CITY's authorized representative, unless earlier terminated in accordance with its provisions. Those portions imposing warranty requirements on CONTRACTOR, together with any implied warranties under law, will continue to remain in effect until completion of the expressed and/or implied warranty periods.

7. **Commencement and Completion.** The CITY and the CONTRACTOR mutually agree time is of the essence with respect to the dates and times set forth in the Agreement Documents. To that end, the CONTRACTOR will commence work not later than **THIRTY (30)** continuous calendar days after CITY issues a Notice to Proceed, and will diligently and continuously prosecute the work at such a rate, and with sufficient forces as will allow the CONTRACTOR to achieve Final Completion no later **ONE HUNDRED (100)** continuous calendar days after CITY issues a Notice to Proceed, subject only to any adjustments in the contract time that may be authorized by change orders properly issued in accordance with the Agreement Documents. In executing this Agreement, CONTRACTOR affirms the time set for completion is reasonable.

8. **Liquidated Damages.** The CONTRACTOR shall consider all contingent work which has to be done by other parties arising from any cause whatsoever, and shall not plead his need of knowledge of said contingent work as an excuse for delay in his work or for non-performance.

If the work is not completed in full by the deadline specified, then for each day thereafter on which the work has not been completed, CONTRACTOR shall pay to the CITY liquidated damages in the amount of **ONE HUNDRED TWENTY-FIVE (\$125.00)** per calendar day, which CITY is hereby authorized to deduct from the final draw before paying any remaining amount to CONTRACTOR. The parties agree that it would be impossible or extremely difficult to compute the actual damages suffered by the CITY due to late completion of the work, that it is therefore appropriate to provide for liquidated damages in this Contract, and that the amount of liquidated damages specified is reasonable and bears a substantial relationship to the probable amount of actual damages the CITY would suffer, and therefore does not constitute a penalty or forfeiture. CONTRACTOR acknowledges that this provision is material to the CITY and that the Owner would not have entered into this Contract but for this provision and that as a result of the Owner's reliance on this provision, the CONTRACTOR shall be stopped to deny or dispute the validity or enforceability of this liquidated damage clause.

Nothing shall be construed as limiting the right of the CITY to declare the Contract forfeited, or to take over the work, or to claim damages for the failure of the CONTRACTOR to abide by each and every one of the terms of the Contract Documents. The completion date shall be construed as being the date on which the work is fully accepted by the CITY.

9. **Termination for Convenience or Cause.**

a. **For Convenience.** The CITY may terminate this Agreement at any time without cause by providing the CONTRACTOR with SEVEN (7) calendar days advance

notice in writing, delivery by email is acceptable. In the event of termination for convenience, all finished or unfinished deliverable items prepared by the CONTRACTOR under this Agreement shall, at the option of the CITY, become the CITY's property. If the Agreement is terminated for convenience by the CITY as provided herein, the CONTRACTOR shall be paid for services satisfactorily completed, less payment or compensation previously made. The CONTRACTOR shall not incur any additional expenses after receiving the written notice of termination.

b. **For Cause or Default.** If, through any cause, the CONTRACTOR should fail to fulfill in a timely and proper manner its obligations under this Agreement, other than for the instances listed below due to "Force Majeure," the CITY will have the right to terminate this Agreement by providing a written notice (Show Cause Notice) to the CONTRACTOR requiring a written response due within FIVE (5) calendar days from receipt of the written notice as to why the Agreement should not be terminated for default. The CITY's Show Cause Notice shall include an Agreement termination date at least SEVEN (7) calendar days subsequent to the due date for the CONTRACTOR's response. Should the CONTRACTOR fail to respond to such show cause notice, or if the CITY determines that the reasons provided by the CONTRACTOR for failure of the CONTRACTOR to fulfill its contractual obligations do not justify continuation of the contractual relationship, the Agreement shall be considered to have been terminated for default on the date indicated in the Show Cause Notice. Should the CITY determine that the CONTRACTOR provided adequate justification that a termination for default is not appropriate under the circumstances; the CITY shall have a unilateral option to either continue the Agreement according to the original contract provisions or to terminate the contract for convenience. In the event that the CITY terminates the contract for default, all finished or unfinished deliverable items under this contract prepared by the CONTRACTOR shall, at the option of the CITY, become CITY property, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding this compensation, the CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement, and the CITY may withhold any payment due the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the CITY from such breach can be determined.

In case of default by the CONTRACTOR, the CITY may procure the services from other sources and hold the CONTRACTOR responsible for any excess cost occasioned thereby. The CITY reserves the right to require a performance bond or other acceptable alternative performance guarantees from the successor CONTRACTOR without expense to the CITY.

In addition, in the event of default by the CONTRACTOR under this Agreement, the CITY may immediately cease doing business with the CONTRACTOR, immediately terminate for cause all existing Agreements the CITY has with the CONTRACTOR, and debar the CONTRACTOR from doing future business with the CITY.

Upon the CONTRACTOR filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the CONTRACTOR, the CITY may immediately terminate, for cause, this Agreement and all other existing agreements the CONTRACTOR has with the CITY, and debar the CONTRACTOR from doing future business with the CITY.

The CITY may terminate this Agreement for cause without penalty or further obligation at any time following Agreement execution, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the CITY is at any time while the Agreement or any extension thereof is in effect, an employee or agent of any other party to the Agreement in any capacity or consultant to any other party of the Agreement with respect to the subject matter of the Agreement. Additionally, the CITY may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the CITY from any other party to the Agreement.

Upon receipt of a termination action, for convenience or cause, the CONTRACTOR shall promptly discontinue all affected work (unless the notice directs otherwise) and deliver or otherwise make available to the City all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the CONTRACTOR in performing this contract, whether completed or in process.

10. **Force Majeure.** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Should there be such an occurrence that impacts the ability of either party to perform their responsibilities under this contract, the nonperforming party shall give immediate written notice to the other party to explain the cause and probable duration of any such nonperformance.

11. **Insurance Requirements.**

a. Scope of Insurance - The CONTRACTOR shall procure and maintain at its own expense, the following minimum insurance coverage, unless otherwise specified in the Contract Documents.

- i All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least A: VII.
- ii The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.
- iii The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater. iv. The required insurance shall not limit the liability of the CONTRACTOR. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR's interests or liabilities, but are merely required minimums.

- iv The provisions of the required insurance are subject to the approval of the City's Risk Manager, and upon request, the CONTRACTOR shall make available certified copies of the various policies for inspection.
- v All liability insurance, except professional liability, shall be written on an occurrence basis.
- vi The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- vii Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims which arise out of the agreement, Contract or lease.

b. Certificate of Insurance - The CONTRACTOR shall provide evidence of required minimum insurance by providing the CITY an ACORD or other Certificate of Insurance in forms acceptable to the Risk Manager for the CITY, before any work under the agreement, Contract or lease begins.

- i Except for workers' compensation and professional liability, the CONTRACTOR's insurance policies shall be endorsed to name the City of Leesburg as additional insured to the extent of the agreement, Contract or lease.
- ii The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows: City of Leesburg, Attn: Purchasing Manager, P.O. Box 490630, Leesburg, Florida 34749-0630.
- iii The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- iv The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- v The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- vi The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR's liability coverage(s).

c. Comprehensive General Liability - The CONTRACTOR shall purchase and maintain Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and completed operations*, independent Contractors, Contractual liability covering the agreement, Contract or lease, broad form property damage coverage, and property damage resulting from explosion, collapse or underground exposures (x, c, u).

- i. For remodeling and construction projects, the CONTRACTOR shall purchase and maintain products and completed operations coverage

for a minimum of three (3) years beyond the CITY's acceptance of the project.

d. Business Automobile Liability - The CONTRACTOR shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.

e. Workers' Compensation - The CONTRACTOR shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employers liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease.

12. **Waiver of Lien.** The CONTRACTOR agrees to make payment of all proper charges for labor and materials supplied and CONTRACTOR shall hold harmless the CITY against any claim arising out of any unpaid bills for labor, services, or materials furnished for the project covered by this Agreement.

13. **Indemnification.** The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The liability of the CONTRACTOR shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

14. **Codes, Laws, and Regulations.** CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

15. **Permits, Licenses, and Fees.** CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR'S performance

of the Scope of Services. All permits and licenses required by law or requirements of the Request for Proposal will remain in force for the full duration of this Agreement and any extensions.

16. **Public Records Retention.** CONTRACTOR shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by CONTRACTOR herein. CONTRACTOR shall provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. CONTRACTOR shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by CONTRACTOR in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-728-9731, 501 W. MEADOW STREET, LEESBURG, FLORIDA 34748.

17. **Access to Records.** The services provided under this Agreement may be funded in part by a grant from a government agency other than the CITY. As a requirement of grant funding CONTRACTOR shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

18. **Contingent Fees Prohibited.** The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

19. **Acceptance of Goods or Services.** The goods delivered as a result of an award from this solicitation shall remain the property of the CONTRACTOR, and services rendered under the Agreement will not be deemed complete, until a physical inspection and actual usage of the product(s) and/or service(s) is (are) accepted by the CITY and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.

Any goods and/or services purchased as a result of this solicitation and/or Agreement may be tested and/or inspected for compliance with specifications. In the event that any aspect of the goods or services provided is found to be defective or does not conform to the specifications, the CITY reserves the right to terminate the solicitation or initiate corrective action on the part of the CONTRACTOR, to include return of any non-compliant goods to the CONTRACTOR at the CONTRACTOR's expense, requiring the CONTRACTOR to either provide a direct replacement for the item, or a full credit for the returned item. The CONTRACTOR shall not assess any additional charge(s) for any conforming action taken by the CITY under this clause. The CITY will not be responsible to pay for any product or service that does not conform to the contract specifications.

In addition, any defective product or service or any product or service not delivered or performed by the date specified in the purchase order or contract, may be procured by the CITY on the open market, and any increase in cost may be charged against the awarded contractor. Any cost incurred by the CITY in any re-procurement plus any increased product or service cost shall be withheld from any monies owed to the CONTRACTOR by the CITY for any contract or financial obligation.

This project will be inspected by an authorized representative of the CITY. This inspection shall be performed to determine acceptance of work, appropriate invoicing, and warranty conditions.

20. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

21. **Independent Contractor.** The CONTRACTOR agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid

under this Agreement. The CONTRACTOR shall be solely and primarily responsible for his and her acts during the performance of this Agreement.

22. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

23. **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

24. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

25. **Contact Person.** The primary contact person under this Agreement for each party is listed here. Contact person and information may be updated as needed by written, electronic mail is acceptable, communication to the other party. Notifying party shall receive confirmation the other party has received the change to the Contact Person.

CONTRACTOR Contact Information

Name/Title: Gary Deremer
Address: 4939 Cross Bayou Boulevard
City, State & Zip: New Port Richey, Florida 34652
Telephone: (727) 848-8292
Email Address: gderemer@uswatercorp.net

CITY Contact Information

Name/Title: Robert Beard, Wastewater Operations Supervisor
Telephone: (352) 516-7151
Email Address: Robert.beard@leesburgflorida.gov

26. **Approval of Personnel.** The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

27. **Disclosure of Conflict.** The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONTRACTOR and his duties under this Agreement.

28. **Warranty.** The CONTRACTOR agrees that, unless expressly stated otherwise in the bid or proposal, the product and/or service furnished as a result of an award from this solicitation shall be covered by the most favorable commercial warranty the CONTRACTOR gives to any customer for comparable quantities of products and/or services and the rights and remedies provided herein are in addition to said warranty and do not limit any right afforded to the CITY by any other provision of this solicitation.

The CONTRACTOR hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the CONTRACTOR in conjunction with this Agreement shall be new, warranted for their merchantability, and fit for a particular purpose.

29. **Risk of Loss.** The CONTRACTOR assumes the risk of loss of damage to the CITY's property during possession of such property by the CONTRACTOR, and until delivery to, and acceptance of, that property to the CITY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the CITY, whether the loss or damage results from acts or omissions (negligent or not) of the CONTRACTOR or a third party.

The CONTRACTOR shall indemnify and hold the CITY harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of this Agreement. The CONTRACTOR shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the CITY when applicable, and shall pay all costs and judgments which may issue thereon.

30. **Employment Eligibility.** The CONTRACTOR is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than TWENTY (20) calendar days after the date of termination. If this contract is terminated for a violation of the statute by the CONTRACTOR, the CONTRACTOR may not be awarded a public contract for a period of ONE (1) year after the date of termination.

31. **Illegal Alien Labor** - CONTRACTOR shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an Agreement with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor is following the terms stated within. The CONTRACTOR nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. CONTRACTOR agrees that it shall

confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the CONTRACTOR. Failure to meet this requirement may result in termination of the Agreement by the CITY.

32. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

33. **Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

U. S. WATER SERVICES CORPORATION

By: _____

Printed: _____

Its: _____
(Title)

CITY OF LEESBURG, FLORIDA

John Christian, Mayor

ATTEST:

J. Andi Purvis, City Clerk

Approved as to form:

Fred A. Morrison, City Attorney

Attachment 'A'
SCHEDULE OF CONTRACT ITEMS

[Use only if applicable. If bid is a lump sum this Attachment is not needed.]

Item	Description	Quantity	Unit	Unit Price	Extended Price
1	MOBILIZATION AND DEMOBILIZATION	1	LS	\$2,900.00	\$2,900.00
2	GENERAL CONDITIONS	1	LS	\$17,282.00	\$17,282.00
3	MAINTENANCE OF TRAFFIC	1	LS	\$4,012.00	\$4,012.00
4	SILT FENCE/EROSION CONTROL	1	LS	\$3,526.00	\$3,526.00
5	SURVEYING	1	LS	\$4,973.00	\$4,973.00
6	DEMOLITION	1	LS	\$17,357.00	\$17,357.00
7	FENCE	1	LS	\$14,334.00	\$14,334.00
8	RESTORATION	1	LS	\$42,668.00	\$42,668.00
9	SANITARY SEWER AND MANHOLES	1	LS	\$58,338.00	\$58,338.00
10	ABANDON SEWERS	1	LS	\$13,541.00	\$13,541.00
	Total				\$178,931.00

Attachment 'B'
SUPPLEMENTAL CONDITIONS – CONSTRUCTION

1. DEFINITIONS

The following definitions shall apply. Whenever the following terms (or pronouns in place of them) are used in the Contract Documents, the intent and meaning of such terms shall be interpreted as follows:

- a. **City Project Representative:** There shall be authorized representative(s) of the CITY assigned to make all necessary inspections of the work performed by the CONTRACTOR and for such other purposes as outlined in the Contract Documents.
- b. **City Technical Representative:** There may be a designated Project Representative assigned by the CITY to inspect the technical aspects of the project. To insure the project is being constructed as designed.
- c. **Engineer of Record:** The Engineer of Record designated by the CITY following Contract Execution.
- d. **Engineer:** The design professional (engineer, architect, landscape architect or surveyor) designated by the CITY to serve as the design professional representing the CITY.
- e. **Notice to Proceed (NTP):** The official Notice from the CITY to the CONTRACTOR providing the date work may begin and the date the performance period begins. The NTP date will be mutually agreed to at or following the pre-construction meeting. CONTRACTOR shall sign the acknowledgement section of the NTP and return to the Purchasing Division. The NTP shall become a part of the Contract Documents.
- f. **Subcontractor:** Includes only those having a direct contract with the CONTRACTOR and it includes one who furnished material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- g. **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.
- h. **Manual(s):** Equipment documentation meant for the end user/consumer of the equipment. CONTRACTOR shall provide all Manuals to the CITY upon substantial completion. Retainage may not be released until the CITY has received all Manuals relevant to the equipment incorporated into the project.
- i. **Surety:** The corporate body which is bound with and for the CONTRACTOR which is primarily liable and which guarantees the faithful performance of the bid and/or agreement.
- j. **Plans, Drawings and/or Sketches:** Graphic representations of the work to be performed or reproductions thereof.
- k. **Specifications:** Broadly defined, the specifications include all data bound together herein or referenced on the plans, including, but not limited to, General Conditions, Technical Specifications, Special Conditions, Geotechnical Investigation, Supplemental Conditions (if any), other detailed technical specifications, exhibits and all addenda.

- l. **Defective:** An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion or CITY has taken beneficial use of completed portions).
- m. **Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.
- n. **Substantial Completion:** The Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer as evidenced by Engineer's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.
- o. **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

2. INSPECTION OF WORK

The Project Representative and his representatives shall, at all times, have access to the work whenever it is in preparation or progress and the CONTRACTOR shall provide proper facilities for such access and for inspection. The work will be conducted under the general direction of the Project Representative of the CITY and is subject to inspection by his appointed inspectors to insure compliance with the terms of the contract. No inspector is authorized to change any provisions of the specifications without written authorization of the CITY, nor shall the presence or absence of an inspector relieve the CONTRACTOR from any requirements of the contract.

If the specifications, the Project Representative's instructions, laws, ordinances or any public authority require any work to be specifically tested or approved, the CONTRACTOR shall give the CITY timely notice of its readiness for inspection, and if the inspection is by another authority than the Project Representative, of the date fixed for such inspection. Inspections by the Project Representative will be promptly made, and where practicable at the source of supply. If any work should be covered up without approval or consent of the CITY, it shall, if required by the Project Representative, be uncovered for examination at the CONTRACTOR's expense.

Re-examination of questioned work may be ordered by the Project Representative and, if so ordered, the work shall be uncovered by the CONTRACTOR. If such work is found in accordance with the contract documents, the CITY will pay the cost of re-examination and

replacement. If such work is found not in accordance with the contract documents, the CONTRACTOR shall pay such cost.

3. TESTS

The Project Representative will have the right to require all materials to be submitted to test prior to incorporation in the work. In some instances, it may be expedient to make these tests at the source of supply and for this reason it is requested that the CONTRACTOR furnish the source

before incorporating material in the work. This does not in any way obligate the Project Representative to perform tests for acceptance of material and does not relieve the CONTRACTOR of his responsibility to furnish satisfactory material. The CONTRACTOR shall furnish two copies of manufacturer's certificate of compliance with these specifications covering manufactured items incorporated in the work.

All field tests for compaction of earthwork and of material incorporated in the sub grade and base will be performed by technicians of a materials testing laboratory approved by the CITY. All tests performed by the laboratory to ascertain that the material, as placed, meets the required specification will be at the expense of the CONTRACTOR and should be included in the bid items as such.

4. TOOLS, PLANT AND EQUIPMENT

If any time before the commencement or during the progress of the work, tools, plant or equipment appears to the Project Representative to be insufficient, inefficient or inappropriate to secure the quality of work required, or the proper rate of progress, the Project Representative will notify the CITY of such conditions. The Engineer will provide written notification to the CONTRACTOR of CITY's quality and/or schedule concerns. The CONTRACTOR will respond in writing within 5 business days of receiving the CITY's notice and will propose remedial actions to address the quality and/or schedule concerns.

5. COLLECTION AND DISPOSAL OF WASTE

The CONTRACTOR shall collect waste from construction areas and elsewhere; handle hazardous, dangerous, or unsanitary waste materials separately from other waste by containerizing properly; dispose of material in a lawful manner. The CONTRACTOR shall be responsible for the transportation and disposal costs of all waste construction materials.

6. BURNING OF DEBRIS

For any areas where the burning of debris is permitted, the CONTRACTOR will be required to request a permit therefore, from the fire authority having jurisdiction in the area in due advance time, and if such permission is granted he shall rigidly abide by all provisions and requirements of such permit. In no case will burning be permitted until the fire authorities have adequately checked the size of the pile to be burned, the weather conditions and any other factors which might affect the proper control of the burning operation.

7. MAINTENANCE OF TRAFFIC

Where construction is located in public right of ways, traveled streets and roads, the CONTRACTOR shall exercise extreme care in seeing that sufficient area is provided and kept open for police, fire, ambulance, mail and private vehicular traffic.

The CONTRACTOR shall ensure that each person supervising the selection, placement and maintenance of Traffic Control Devices in the FDOT Work Zone shall be certified by attending an FDOT approved MOT training course. A copy of these certifications shall be submitted to the CITY of Leesburg upon request.

8. PROTECTION AGAINST POLLUTION

The CONTRACTOR shall comply with all legal regulations pertaining to pollution as are applicable to the site and he shall take all measures necessary to assure that no pollution, temporary or permanent, occurs to any lakes or other water areas as a result of runoff from the areas within which he is working.

This shall include the installation of temporary construction turbidity screens or hay bales along the edge of existing wetlands prior to the start of construction. These areas shall be as shown on the plans.

CONTRACTOR shall maintain the fuel storage area in accordance with local, state and federal regulations. Refueling vehicles and refueling techniques shall also comply with all applicable regulations. Clean-up of the fuel storage area shall be as required by the regulations and in accordance with these regulations.

9. TEMPORARY FENCING AND BARRICADES

The CONTRACTOR shall at his cost erect barricades sufficient to prevent injury to persons or damage to property, including the CONTRACTOR's personal property and materials. The CITY shall not be held responsible for the loss, theft, or vandalism of the CONTRACTOR's equipment or other personal property, including construction materials and supplies. Fences shall be constructed to prevent entry of unauthorized persons; cover trenches and holes when not in use; erect barriers at sharp changes in plane more than four (4) feet high. Should construction operations temporarily obstruct road passage, the CONTRACTOR shall at his cost provide suitable flagmen to control vehicular traffic on the road. Permits to use construction equipment on Florida Department of Transportation Right-of-Way shall be secured by the CONTRACTOR prior to actual beginning of work. The CONTRACTOR shall, at his cost, remove all temporary protection from the work site upon completion of the work.

10. WORKMANSHIP, MATERIALS, APPLIANCES, AND EMPLOYEES

All work will be done in a competent and workmanlike manner. All materials, equipment and supplies furnished by the CONTRACTOR for permanent incorporation in the work shall be new and of quality standards specified. Workmanship shall be first class and the finished product equal to the best-accepted standards of the trade for the category of work performed. It is the CITY's intent to obtain a high-quality job that will operate and function with least maintenance costs. The CONTRACTOR shall, if requested by CITY, furnish satisfactory evidence as to the kind and quality of materials.

Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.

The CONTRACTOR shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Neither party shall employ or hire any employees of the other party without his consent.

11. GENERAL QUALITY AND STANDARDS

To facilitate rapid examination, detailed specifications concerning basic requirements for labor, materials, equipment and/or incidentals to be used on the project are included under the various divisions in as brief a form as is consistent with clarity. The primary concern of the detailed specifications is for standards of performance expected for the finished work.

When in the detailed specifications reference is made to a particular code or specification, the latest edition of said code or specification shall apply.

The interests of the CITY, the CONTRACTOR and others concerned with the work require the inclusion of certain general governing requirements and standards, as a precaution against contingency and to provide for the conditions under which the construction and the administration of the work will be carried out.

General requirements for the quality of the work, when not otherwise covered in more specific detail in the specifications, will be governed by acceptable standards of the trade.

These specifications consider the project as a whole and assume its completion under a general contract. Further, the scope of subcontracts and the quantities of materials and labor supplied to the CONTRACTOR by others are assumed to be matters governed by agreement between the CONTRACTOR and his Subcontractors and suppliers and not by agreement between the CITY and any Subcontractor or suppliers.

Various sections of the construction specifications are intended to govern only the quality of work and/or materials incidental to the particular branch of work mentioned in the section title. Sections are not intended as itemizations of the work materials to be furnished or to limit or define the scope of any subcontract or agreement to furnish material and labor.

The furnishing of all items of material, labor, equipment and/or incidentals necessary to the completion of the work as a whole will be expected when such items are called for on the drawings by diagram, note or schedule, are listed in the specifications, or are reasonably inferred by either or a combination of both.

During the construction operations under this contract, the CITY may elect to contract other work for the project. The CONTRACTOR shall coordinate his operations with those of any other such CONTRACTORS as well as any work of constructing or adjusting utilities by any

other authorities, to the end that the least practical handicap to the work of all such CONTRACTORS or authorities will result.

12. PROJECT COORDINATION

The CONTRACTOR shall coordinate construction operations that are dependent upon each other for proper installation, connection and operation. The CONTRACTOR shall make adequate provisions to accommodate items scheduled for later installation.

The CONTRACTOR shall inspect both the substrate and conditions under which the work is to be performed. The CONTRACTOR shall not proceed until unsatisfactory conditions have been corrected in an acceptable manner.

The CONTRACTOR shall inspect materials or equipment immediately upon delivery and again prior to installation. The CONTRACTOR shall reject damaged and defective items.

The CONTRACTOR shall supervise construction activities to ensure that no part of the construction is subject to deleterious exposure during the construction period. Where applicable, such exposures include, but are not limited to, the following: Unprotected storage, Improper shipping and handling, Theft, Vandalism.

13. COORDINATION WITH UTILITY COMPANIES

CONTRACTOR shall coordinate with all utility installations. CONTRACTOR shall notify the appropriate utility companies, in writing, adequately in advance of the time frame set aside for such utility installation. The utility companies referred to herein shall include, but not be limited to, Power, Gas, Telephone, and Cable Television. CONTRACTOR shall coordinate the installation of "sleeves" for the utility companies as may be required.

CONTRACTOR shall supply the CITY with copies of all correspondence notifying the utility companies of his intended schedule of construction and the expected date for their respective utility installations. Written notices shall be sent to the utility companies at sixty (60) days, thirty (30) days and two (2) weeks prior to the time at which the utility installation should begin.

14. SUPERVISION

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

If the CONTRACTOR, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omissions in the drawing or in layout as given by points and instructions, it shall be his duty to immediately inform the Project Representative, in writing, and the Project Representative will promptly verify the same. Any work done after such discovery, until authorized, will be done at the CONTRACTORS' risk.

15. CONSTRUCTION SUPERINTENDENT

CONTRACTOR shall employ a Construction Superintendent who shall be present on-site or available throughout the duration of the project and shall remain associated with the project until completion unless otherwise requested to be replaced by the CITY. The superintendent shall be experienced in the work required and perform all coordination activities generally conducted by project superintendents including, but not limited to, subcontractor coordination, utility installations, inspections, testing, material deliveries, etc. The superintendent shall be present at the pre-construction meeting and shall remain on the project until completion. The owner reserves the right to request a resume of experience for the superintendent including, but not limited to, requesting references from recent projects. Substitution of superintendents after the start of the work shall be approved by the owner in advance. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

16. WAGE RATES/EQUAL EMPLOYMENT OPPORTUNITY

Wage rates for laborers, mechanics and apprentices shall not be less than those established by the Florida Department of Labor and Employment Security and/or the United States Department of Labor for this work, as may be attached hereto. The CONTRACTOR must insure Equal Employment Opportunity as part of the awarded contract and also subcontracts awarded by the CONTRACTOR.

17. SUBCONTRACTS

The CONTRACTOR shall, as soon as practicable after signing the contract, notify the Project Representative in writing of any changes in the names of subcontractors proposed for the work as listed on the bid form. The CONTRACTOR shall not employ subcontractors, unless they are approved by the Project Representative.

The CONTRACTOR agrees that he is as fully responsible to the CITY for the acts and omissions of his subcontractors and of persons, either directly or indirectly, employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractors and the CITY.

18. PRE-CONSTRUCTION MEETING

The CITY shall schedule a meeting after the Notice of Award. The Project Representative, Engineer, and CONTRACTOR shall attend this mandatory meeting. The following items shall be completed:

- a. Submission of list of Subcontractors, Schedule of Values and Progress Schedule.
- b. Designation of Personnel representing the parties in Contract, and the Engineer.
- c. Use of premises by CITY and the CONTRACTOR.
- d. Survey layout and scheduling.
- e. Security and housekeeping procedures.
- f. Requirements for start-up of equipment.
- g. Inspection and acceptance of equipment put into service during construction period.

At least ten (10) days before submission of the first Application for Payment a conference attended by CONTRACTOR, Engineer and others as appropriate will be held to finalize the schedules submitted by CONTRACTOR. The finalized progress schedule will be acceptable to Engineer as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on Engineer responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereto. The finalized schedule of Shop Drawing submissions will be acceptable to Engineer as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to Engineer as to form and substance.

19. ORDER OF COMPLETION

The CONTRACTOR shall submit at such times as may be requested by the Project Representative, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work with dates on which the CONTRACTOR will start the several parts of the work and estimated dates of completion of the several parts. The CITY retains the right to dictate to the CONTRACTOR the order of completion of the work.

20. MATERIALS AND EQUIPMENT SCHEDULES

As soon as practicable and within ten (10) days after the date of award of contract and before any material or equipment is purchased, the CONTRACTOR will submit to the CITY for approval a complete list, in triplicate, of materials to be incorporated in the work and samples of each listed material. The list shall include catalog numbers, cuts, diagrams; drawings and such other descriptive data as may be required. No consideration will be given to partial lists submitted from time to time. Approval of materials will be based on manufacturers' published ratings. Any materials listed that are not in accordance with the specification requirements may be rejected.

When one or more manufacturer's items are specified, it shall be understood that the item(s) so specified are hereby approved as to suitability and no substitutions will be permitted unless followed by such qualifying phrases as equal "approval equal" or "as approved" in which case the approval of the CITY for items not specified shall be obtained before they may be used.

21. CONTRACTOR'S REQUESTS FOR INTERPRETATION (RFIs)

Should CONTRACTOR be unable to determine from the Contract Documents the exact material, process, or system to be installed; or when the elements of construction are required to occupy the same space (interference); or when an item of Work is described differently at more than one place in the Contract Documents; the CONTRACTOR shall request that the Architect/Engineer (AE), or CITY Representative, make an interpretation of the requirements of the Contract Documents to resolve such matters. CONTRACTOR shall comply with procedures specified herein to make Requests for Interpretation (RFIs).

- a. Submission of RFIs: RFIs shall be prepared and submitted on a form provided by the CITY.
 - i. Forms shall be completely filled in, and if prepared by hand, shall be fully legible after copying by xerographic process.
 - ii. Each RFI shall be given a discrete, consecutive number.

- iii. Each page of the RFI and each attachments to the RFI shall bear the CITY's project name, project number, date, RFI number and a descriptive title.
 - iv. CONTRACTOR shall sign all RFIs attesting to good faith effort to determine from the Contract Documents the information requested for interpretation. Frivolous RFIs shall be subject to reimbursement from CONTRACTOR to CITY for fees charged by A/E, A/E consultants and other design professionals engaged by the CITY.
- b. Subcontractor-Initiated and Supplier-Initiated RFIs: RFIs from subcontractors and material suppliers shall be submitted through, be reviewed by and be attached to an RFI prepared, signed and submitted by CONTRACTOR. RFIs submitted directly by subcontractors or material suppliers will be returned unanswered to the CONTRACTOR.
 - i. CONTRACTOR shall review all subcontractor- and supplier-initiated RFIs and take actions to resolve issues of coordination, sequencing and layout of the Work.
 - ii. RFIs submitted to request clarification of issues related to means, methods, techniques and sequences of construction or for establishing trade jurisdictions and scopes of subcontracts will be returned without interpretation. Such issues are solely the CONTRACTOR'S responsibility.
 - iii. CONTRACTOR shall be responsible for delays resulting from the necessity to resubmit an RFI due to insufficient or incorrect information presented in the RFI.
- c. Requested Information: CONTRACTOR shall carefully study the Contract Documents to ensure that information sufficient for interpretation of requirements of the Contract Documents is not included. RFIs that request interpretation of requirements clearly indicated in the Contract Documents will be returned without interpretation.
 - i. In all cases in which RFIs are issued to request clarification of issues related to means, methods, techniques and sequences of construction, for example, pipe and duct routing, clearances, specific locations of Work shown diagrammatically, apparent interferences and similar items, the CONTRACTOR shall furnish all information required for the A/E or CITY's Representative to analyze and/or understand the circumstances causing the RFI and prepare a clarification or direction as to how the CONTRACTOR shall proceed.
 - ii. If information included with this type RFI by the CONTRACTOR is insufficient, the RFI will be returned unanswered.
- d. Unacceptable Uses for RFIs: RFIs shall not be used to request the following:
 - i. Approval of submittals
 - ii. Approval of substitutions
 - iii. Changes that entail change in Contract Time and Contract Sum
 - iv. Different methods of performing Work than those indicated in the Contract Drawings and Specifications
- e. Disputed Requirements: In the event the CONTRACTOR believes that a clarification by the CITY's A/E, or Representative, results in additional cost or time, CONTRACTOR shall comply with the method for requesting a Change Order.

- f. RFI Log: CONTRACTOR shall prepare and maintain a log of RFIs, and at any time requested by the CITY's Representative, the CONTRACTOR shall furnish copies of the log showing all outstanding RFIs.
- g. Review Time: Architect/Engineer or CITY Representative (CITY) shall return RFIs to CONTRACTOR and within five (5) calendar days of receipt. RFIs received after 12:00 noon shall be considered received on the next regular working day for the purpose of establishing the start of the five-calendar day response period.

22. SUBMITTAL REQUIREMENTS OF CONTRACTOR

After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to Engineer for review in accordance with the accepted schedule of Shop Drawing submissions, or for other appropriate action if so indicated in the Special Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable Engineer to review the information as required.

CONTRACTOR shall also submit to Engineer for review with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

At the time of each submission, CONTRACTOR shall give Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and in addition, shall cause a specific notation to be made on each Shop Drawing submitted to Engineer for review of each such variation.

Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by Engineer, and shall return the required number of corrected

copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

Engineer's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called Engineer's attention to each such variation at the time of submission as required by this Article and Engineer has given written review each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review; nor will any review by Engineer relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions herein.

Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to Engineer's review of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

23. CHANGES IN THE WORK

Any Change in the Work will be documented in writing and approved by the CITY in writing. Changes that increase the cost of the work may need to be approved by CITY Commission depending on the dollar value of the increase change order. No work may be performed prior to the change being approved by CITY.

The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without change in the Contract Price.

The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price, shall be delivered in writing to the CITY and the Engineer within fifteen days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five days of such occurrence unless the Engineer allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by the Engineer if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. The Engineer(s) decision shall be final and binding. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- a. where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved, or ii. by mutual acceptance of a lump sum, or
- b. on the basis of the cost of the work plus a CONTRACTOR's fee for overhead and profit.

24. DETAIL DRAWINGS AND INSTRUCTIONS

The CITY will furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions will be consistent with the contract documents, true developments thereof and reasonably inferable therefrom.

25. OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the CITY are the property of the CITY. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to the CITY, at the request of the CITY upon the completion of the work.

26. SURVEYS, PERMITS AND REGULATIONS

The CITY will furnish horizontal and vertical control necessary to layout the work in an orderly and workmanlike manner.

Horizontal Control furnished by the CITY shall consist of adequately marked property corners or offset corners, with dimensions as shown on the drawings. Vertical Control will consist of benchmarks established within the immediate area of the work.

It shall be the responsibility of the CONTRACTOR to furnish all construction layout of the work, including, but not limited to, layout and elevations for the construction and final grade of the site.

The CONTRACTOR shall maintain and preserve all stakes and marks established by the CITY and should such stakes or marks be carelessly or willfully destroyed or damaged by the CONTRACTOR, said stakes or marks shall be replaced by the CITY at the expense of the CONTRACTOR.

The CONTRACTOR will set the horizontal and vertical control only at the beginning of the job as specified above. Interim staking during the job and all staking and layout work not furnished by the CITY as specified above shall be the responsibility of the CONTRACTOR.

The CITY will furnish all personnel and equipment and materials to make such surveys as are necessary to determine the quantities of work performed.

The CITY will furnish environmental permits unless otherwise specified. The CONTRACTOR shall obtain any and all required permits from all appropriate government agencies.

Work permits and licenses necessary for the prosecution of the work shall be secured and paid for by the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be secured and paid for by the CITY unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the CONTRACTOR observes that the drawings and specifications are at variance therewith, he shall promptly notify the CITY in writing and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the CONTRACTOR performs work knowing it to be contrary to such

laws, ordinances, rules and regulations and without such notice to the CITY, he shall bear all cost arising there from.

27. ROYALTIES AND PATENTS

There may be a design, device, material or process included in these plans and specifications which may be covered by letters, patent or copyright. Prior to use of any design, device, material or process, or its incorporation into the construction, the CONTRACTOR shall secure indemnity from his subcontractors or material suppliers that will protect and save harmless the CITY from all loss on account thereof.

The CONTRACTOR shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the CITY harmless from loss on account thereof, except that the CITY shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the CONTRACTOR has information that the process or article specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the CITY.

28. PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all his work from damage and shall protect the CITY's property from injury or loss arising in connection with this contract. The CONTRACTOR shall at all times protect all public and privately-owned property, structures, utilities, and work of any kind against damage or interruption of service which may result from the operations of the CONTRACTOR. Damage or interruption to service resulting from failure to do so shall be repaired or restored by or at the expense of the CONTRACTOR except such as may be directly due to errors in the contract documents or caused by the agents or employees of the CITY.

29. DEDUCTIONS FOR UNCORRECTED WORK

If the Project Representative deems it inexpedient to correct work injured or done, not in accordance with the contract, an equitable deduction from the contract price will be made therefore.

30. DELAYS AND EXTENSION OF TIME

If the CONTRACTOR be delayed at any time, in the progress of the work by an act of neglect of the CITY or of his employees, or by any other CONTRACTOR employed by the CITY or by Changes ordered in the work or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the CONTRACTOR's control, or by delay authorized by the Project Representative, or by any cause which the Project Representative may decide to justify the delay, then the time of completion will be extended for any such reasonable time as the Project Representative may decide.

No such extension will be made for delay occurring more than seven (7) days before claim therefore is made in writing to the CITY. In the case of a continuing cause or delay, only one claim is necessary.

If no schedule or agreement stating the dates upon which drawings shall be furnished is made, then no claim for delay will be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claims be reasonable.

31. CORRECTION OF WORK BEFORE FINAL PAYMENTS

The CONTRACTOR shall promptly remove from the premises all materials condemned by the Project Representative as failing to conform to the contract, whether incorporated in the work or not, and the CONTRACTOR shall promptly replace and re-execute his own work in accordance with the contract and without expense to the CITY and shall bear the expense of making good all work of other CONTRACTORS destroyed or damaged by such removal or replacement.

If the CONTRACTOR does not correct such condemned work and material within a reasonable time fixed by written notice, the CITY may correct it at the expense of the CONTRACTOR. If the CONTRACTOR does not pay the expense of such correction within three (3) days thereafter, the CITY may, upon three (3) days written notice, deduct all the cost and expenses that should have been borne by the CONTRACTOR.

32. THE CITY'S RIGHT TO DO WORK

If the CONTRACTOR should neglect to prosecute the work properly or fail to perform any provision of this contract, the CITY after three (3) days written notice to the CONTRACTOR, may, without prejudice to any other remedy he may have, make good such deficiencies at the CONTRACTOR's expense.

33. SUSPENSION OF WORK

The CITY may at any time suspend the work or any part thereof by giving five (5) days notice to the CONTRACTOR in writing. The work shall be resumed by the CONTRACTOR within ten (10) days after the date fixed in a written notice to resume work from the

CITY to the CONTRACTOR. The CITY will reimburse the CONTRACTOR for expense incurred by the CONTRACTOR in connection with the work under this contract as a result of such suspension unless the suspension was recommended to the CITY by the Project Representative to enforce the contract or for any violation of the contract.

34. REMOVAL OF EQUIPMENT

In the case of annulment of this contract before completion, from any cause whatever, the CONTRACTOR, if notified to do so by the CITY, shall promptly remove any part or all of his equipment and supplies from the property of the CITY, failing which, the CITY will have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

35. USE OF COMPLETED PORTIONS

Use by CITY of any finished part of the Work, which has specifically been identified in the Contract Documents, or which CITY, Engineer and CONTRACTOR agree constitutes a separately functioning and useable part of the Work that can be used by CITY without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

- a. CITY at any time may request CONTRACTOR in writing to permit CITY to use any such part of the Work which CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to CITY and Engineer that said part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify CITY and Engineer in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, CITY, CONTRACTOR and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify CITY and CONTRACTOR in writing giving the reasons therefore. If Engineer considers that part of the Work to be substantially complete, the provisions of Substantial Completion will apply with respect to certification of that part of the Work and the division of responsibility in respect thereof and access thereto.
- b. CITY may at any time request CONTRACTOR in writing to permit CITY to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to Engineer and within a reasonable time thereafter CITY, CONTRACTOR and Engineer shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to CITY and Engineer that such part of the Work is not ready for separate operation by CITY, Engineer will finalize the list of items to be completed or corrected and will deliver such list to CITY and CONTRACTOR together, with a written recommendation as to the division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work, which will become binding upon CITY and CONTRACTOR at the time when CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed Engineer). During such operation and prior to Substantial Completion of such part of the Work, CITY shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.
- c. If CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with this Article; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

36. PROMPT PAYMENT

It is the policy of the CITY that payment for all purchases by the CITY shall be made in a timely manner and that interest payments will be made on late payments in accordance with Part VII, Chapter 218, Florida Statutes, known as the Florida Prompt Payment Act.

37. APPLICATION FOR PAYMENT

The CONTRACTOR shall submit to the CITY, at least 20 days before the date established for each progress payment (but not more often than once a month), an Application for Payment filled out and signed by CONTRACTOR covering the work completed as of the date of the Application. Upon review and approval by the CITY and Engineer (if applicable).

The retained percentage (retainage) amount with respect to the progress payments shall initially be 10% unless stated otherwise in the Construction Services Agreement. Retainage amounts and retainage process shall be governed by Florida Statute 255.078 – Public Construction Retainage.

CONTRACTOR shall, before any draw is issued, provide a sworn statement to CITY attesting that all services, materials and labor, furnished to the project to the date of the draw request have been paid for in full, or listing the amounts due for such services, materials and labor, and if any amounts are listed as being due, the CITY shall have the right to pay those amounts directly to the persons to whom they are due, with the balance of the draw amount to be paid to CONTRACTOR, and if the draw is insufficient to pay the amounts then due for services, materials and labor, the CITY shall pay those to whom such amounts are due on a pro rata basis until the draw is exhausted, and any remaining amounts due others shall be paid first out the next draw due.

The CITY shall not be required to issue progress payments pursuant to the draw schedule until the CITY has verified, by on-site inspection, that construction has in fact progressed to the stage at which a draw is required and that the work done and materials furnished are in compliance with the Contract Documents, and all applicable technical codes. The final draw due upon “completion” shall not be payable until the CITY, its Project Representative or Engineer of Record has determined the work has been completed in accordance with the Contract Documents and a Certificate of Completion has been issued by the CITY.

38. PAYMENTS WITHHELD

The CITY may withhold or, on account of subsequently discovered evidence, recover the whole or part of any payment to such an extent as may be necessary to protect the CITY from loss on account of—

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the CONTRACTOR to make payments properly to subcontractors or for materials or labor.
- d. The Project Representative's opinion that the contract cannot be completed for the balance then unpaid.
- e. Damage to another CONTRACTOR.
- f. Failure to maintain adequate progress. vii. Damage to the building resulting from the negligence of the CONTRACTOR.

When the above grounds are removed, payment will be made for amounts withheld because of them.

39. FINAL PAYMENT APPLICATION

Administrative actions and submittals that must precede or coincide with submittal of the final payment Application for Payment include the following:

- a. Completion of Project closeout requirements.
- b. Completion of items specified for completion after Substantial Completion.
- c. Assurance that unsettled claims will be settled.
- d. Transmittal of required project construction records to CITY.
- e. Final Clean Up as outlined in these General Conditions

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Engineer will make a final inspection with CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

After CONTRACTOR has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents--all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions under Waiver of Claims), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by CITY, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY or CITY's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to CITY to indemnify CITY against any Lien.

If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents, Engineer is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application to CITY for payment. Thereupon Engineer will give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions found under "Waiver of Claims". Otherwise, Engineer will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to CITY of the

Application and accompanying documentation, in appropriate form and substance, and with Engineer's recommendation and notice of acceptability, the amount recommended by Engineer will become due and will be paid by CITY to CONTRACTOR.

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if Engineer so confirms, CITY shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

40. CONTRACTOR'S CONTINUING OBLIGATION

CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by Engineer, nor any correction of defective Work by CITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided under Waiver of Claims)

41. DAMAGES

Any claim for damage arising under a resulting Agreement shall be made in writing to the party liable within ten (10) days after the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials.

42. EQUIPMENT STARTUP

Equipment startup shall be in accordance of the manufacturer's recommendations, and as required to demonstrate performance to the Engineer and CITY in accordance with the specifications. The CONTRACTOR shall provide 30-days notice to the Engineer and CITY of the date on which all equipment and systems will be ready for startup. The startup date shall be arranged as required by the CITY's operational schedule with consideration of the schedule needs of the Engineer and CONTRACTOR.

43. COMPLETION OF WORK

The CONTRACTOR shall be considered "substantially complete" when the equipment and systems have been used without failure for seven (7) continuous days, and in the opinion of the CITY, it's Project Representative or Engineer of Record, all work has been completed in general accordance with the plans and specifications and all test reports, inspections, etc. have been completed and delivered to the Engineer. Substantial completion shall also mean that degree of

completion which allows the CITY to occupy and use the facilities. When the Engineer deems the work to be "substantially complete" he shall indicate this to the CITY in writing with copies to the CONTRACTOR. The date of contract completion shall be the same date at which the CONTRACTOR is considered substantially complete by the Engineer.

44. ACCEPTANCE OF FINISHED WORK

The CITY shall make final acceptance inspection of the Project covered by this Contract when the Project is completed and finished in all respects in accordance with the Contract Documents. CONTRACTOR shall furnish to the Engineer or CITY Representative a complete set of As-Built drawings. These drawings shall be prepared by a licensed Surveyor in the State of Florida and shall be submitted to the Engineer within five (5) days following the completion of the work.

45. FINAL CLEAN UP

The CONTRACTOR shall complete all cleaning operations before requesting final inspection.

The CONTRACTOR shall, as directed by the Project Representative, remove from the CITY's property and from all public and private property, at his own expense, all temporary structures, rubbish, and waste materials resulting from his operation.

The CONTRACTOR shall remove temporary protection and facilities installed for protection of the work during construction.

The CONTRACTOR shall comply with all regulations of authorities having jurisdiction and safety standards for cleaning. The CONTRACTOR shall not burn waste materials. The CONTRACTOR will not discharge volatile, harmful or dangerous materials into drainage systems. The CONTRACTOR will remove all waste materials from the site and dispose of in a lawful manner. Materials of value remaining after completion of associated work will become the owner's property. The CONTRACTOR will arrange for the disposition of these materials as directed by the CITY.

The CONTRACTOR shall rake the grounds that are neither paved nor planted to a smooth, even textured surface.

46. TREES

It shall be the responsibility of the CONTRACTOR to protect all trees within the limits of the work and as designated by the Project Representative.

47. GUARANTY

CONTRACTOR warrants and guarantees to CITY that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in the paragraph in this section labeled 'Inspections, Correction, Removal Of Defective Work'.

All equipment, materials and installation and workmanship furnished by the CONTRACTOR under the terms of the Contract, shall be guaranteed by the CONTRACTOR against defective

workmanship, mechanical and physical defects, leakage, breakage and other damages and failure, under normal operation for a period of two (2) years or as otherwise specified in the Technical Specifications and after the date of acceptance thereof by the CITY, and each item of equipment or materials and installation proving to be defective within the specified period of guaranty shall be replaced, without cost to the CITY, by the CONTRACTOR or by the Surety. The period of guaranty of such replacement shall be from and after the date of final acceptance of the Project by the CITY, provided however, that where any item or equipment or material comes with a manufacturer's warranty of two (2) years or longer, that warranty shall take precedence over the warranty of CONTRACTOR hereunder.

48. INDEMNITY

The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and defend, indemnify, and save harmless the CITY and Engineer or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY and Engineer or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR's duties under the Contract, or through the negligence of the CONTRACTOR in the performance of its duties under this Contract, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants or subcontractors.

Provided, however, if this Contract is deemed, by a court of competent jurisdiction, to be a construction contract for the purposes of Section 725.06, Florida Statutes, any obligation of the CONTRACTOR to defend, indemnify or hold harmless an CITY and Engineer shall be limited to an obligation to indemnify and hold harmless the CITY and Engineer, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Contract.

49. ASSIGNMENT

Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any moneys due, or to become due to him hereunder, without the previous written consent of the Project Representative.

50. RIGHTS OF VARIOUS INTERESTS

Wherever work being done by the CITY's forces, or by the other CONTRACTORs, is contiguous to work covered by this contract, the respective rights of the various interests involved will be established by the Project Representative, to secure the completion of the various portions of the work in general harmony.

51. SEPARATE CONTRACTS

The CITY reserves the right to let other contracts in connection with this work. The CONTRACTOR shall afford other CONTRACTORs reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly conduct and coordinate his work with theirs.

If any part of the CONTRACTOR's work depends, for proper execution or results upon the work of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the Project Representative any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other CONTRACTOR's work as fit and proper for the reception of his work, except as to defects which may develop in the other CONTRACTOR's work after the execution of the work.

To insure the proper execution of his subsequent work, the CONTRACTOR shall measure work already in place and shall at once report to the Project Representative any discrepancy between the executed work and the drawings.

52. LANDS FOR WORK

The CITY will provide the lands upon which the work under this contract is to be done, except that the CONTRACTOR shall provide land required for the erection of temporary construction facilities and storage of his material, together with right of access to same.

53. ACCESS TO RECORDS

The CITY, the Florida Department of State, or any of their duly authorized representatives shall have access to any books, documents, papers or any other records prepared by the CONTRACTOR that are directly pertinent to the work produced under this Agreement for making audit, examination, excerpts and transcription. Such records will be maintained for five (5) years after the completion of the work and until claims or audit findings have been resolved which were initiated prior to the expiration of the five (5) year period.

54. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS

The Agreement shall be signed in quadruplicate by the CITY and the CONTRACTOR. The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of CITY, CONTRACTOR or Engineer, or any of their consultants, agents or employees from

those set forth in the Contract Documents, nor shall it be effective to assign to Engineer, or any of Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of these Supplemental Conditions. Clarifications and interpretations of the Contract Documents shall be issued by Engineer.

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to Engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from Engineer; however, CONTRACTOR shall not be liable to CITY or Engineer for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

55. CONTRACTOR'S UNDERSTANDING

CONTRACTOR has visited the site, has called for utility locates and has familiarized itself with the local conditions under which the work is to be performed, both underground and above ground and both on and off premises and has correlated these observations with the requirements of the proposed contract documents; all as considered necessary or pertinent to the work, and any failure to thus make all such prior investigations and studies shall in no way act as a waiver of any of the terms of the contract. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained

56. FAMILIARITY WITH LAWS

The CONTRACTOR is required to be familiar with all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the CONTRACTOR will in no way relieve him from responsibility.

57. SALES TAX

The CONTRACTOR is required to pay Florida sales and use taxes on all materials purchased for this project unless otherwise specified in the document. All Florida sales and use taxes will be included in the submitted bid price(s).

58. CLARIFICATIONS AND INTERPRETATIONS OF CONTRACT DOCUMENTS

It is the duty of the CONTRACTOR to notify the Engineer, in writing, in the event of any doubt or question as to the true meaning of any provision in the Contract Documents. The Engineer's decision thereon shall be final. Annotated dimensions on drawings shall govern and work not dimensioned shall be as clarified by the Engineer. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Materials or work described in words which have a well-known technical or trade meaning shall be deemed to refer to such recognized standard.

Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or

interpretation justifies an increase in the Contract Price or an extension of the Contract Time then CONTRACTOR shall notify CITY in accordance with the Agreement.

Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims in respect of changes in the Contract Price or Contract Time will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render writing within a reasonable time. Written notice of each such claim, dispute and other matters will be delivered by the claimant to Engineer and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within sixty days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data in support of the claim.

When functioning as interpreter and judge under this Article, Engineer will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant this Article with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as permitted by the Agreement.) will be a condition precedent to any exercise by CITY or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

59. LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

Neither Engineer's authority to act nor any decision made by Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating other-wise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of this Article.

Engineer will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

Engineer will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

60. SAFETY AND PRECAUTION

CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- a. all employees on the Work and other persons and organizations who may be affected thereby;
- b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and iii. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph caused, directly or in this Article directly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to CITY and CONTRACTOR that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to CITY.

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from Engineer or CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give

Engineer prompt written notice that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Engineer determines that a change in the

Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

61. RECORD DOCUMENTS

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, reviewed Shop Drawings, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all reviewed samples and a counterpart of all reviewed Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents or as-builts, samples and Shop Drawings will be delivered to Engineer for CITY. Upon delivery of such documents to Engineer, the CONTRACTOR shall provide a written certification, signed and dated, that all documents accurately and completely reflect all deviations from or changes in the original Contract Documents made during construction of the project.

Record documents shall be up-to-date and available for review by the resident project representative prior to each application for progress payment. Payment will not be made for construction of items not shown on the record documents.

These requirements also supplement those of Item 66. Not less than two percent (2%) of the contract price shall be retained until correct record drawings, specifications, addenda, modifications and shop drawings are delivered to and reviewed by the Engineer.

62. PHYSICAL CONDITIONS-UNDERGROUND FACILITIES

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site are based on information and data furnished to CITY or Engineer by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- a. CITY and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
- b. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

The word facility as used in this subsection titled "Utilities" includes any pipe conveying gases or liquids and appurtenances attached thereto; cables, conduits, wires, ducts and appurtenances; poles and appurtenances; any of which may be buried below grade or installed at or above grade level. A facility excludes irrigation pipes, service connections and traffic signal wiring. A service connection is a pipe (excluding irrigation pipes), cable, wire, duct or conduit that is intended to connect a facility with a user. The word Utility as used in this subsection titled

"Utilities" refers to the entity having legal ownership of the facility, service connection, irrigation pipe, or traffic signal wiring.

The Engineer has endeavored to determine the existence of underground facilities at the site of the work from the records of the utilities with known facilities in the vicinity of the work. The position of these facilities as derived from such records is shown on the plans. Service connections, irrigation pipes, and traffic signal wiring may not be shown on the plans. The CONTRACTOR shall make his own investigations, including exploratory excavations and contact with Utilities, to determine the exact locations and type of existing facilities, service connections, irrigation pipes, and traffic signal wiring prior to commencing work in the area and shall be responsible for any damage thereto.

Damage, injury, or loss resulting in whole or in part from the CONTRACTOR's failure to locate and preserve a facility, service connection, irrigation pipe, or traffic signal wiring shall under no circumstances be deemed attributable to the fault of the Drawings or Specifications or to the acts or omissions of the CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable.

With respect to underground facilities, no claim for a change in the contract price may be allowed unless the CONTRACTOR discovers an underground facility which is not indicated or referred to in the Contract Documents or which is in a position differing materially and significantly from that indicated or referred to in the Contract Documents. If such discovery is made, the CONTRACTOR shall promptly notify in writing the CITY, Engineer and the Utility. The CITY may make changes in the alignment and grade of the work.

At no additional cost to the CITY, the CONTRACTOR shall replace, remove, relocate, protect, or temporarily maintain a facility which is not in a position differing materially and significantly from that indicated or referred to in the Contract Documents. At no additional cost to the CITY, the CONTRACTOR shall adjust the top elevation of all valve boxes and manholes to match the finish grade or pavement surface and shall replace, remove, relocate, protect, or temporarily maintain all service connections, irrigation pipes, and traffic signal wiring. The work on the facility, service connection, irrigation pipe or traffic signal wiring shall be done in a manner satisfactory to the Utility, it being understood that the Utility has the option of doing such work with his own forces, or permitting the work to be done by the CONTRACTOR.

63. PHYSICAL CONDITIONS

- a. Exploration and Reports: Reference is made in the Special Conditions to those reports of exploration and tests of subsurface conditions at the site that have been utilized by Engineer in preparation of the Contract Documents. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.
- b. Unforeseen Conditions: CONTRACTOR shall promptly notify CITY and Engineer in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract Documents. Engineer will promptly review those conditions and advise CITY in writing if further investigation or tests are necessary.

Promptly thereafter, CITY shall obtain the necessary additional investigations and tests and furnish copies to Engineer and CONTRACTOR. If Engineer finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by CONTRACTOR, a Change Order shall be issued incorporating the necessary revisions.

64. REVIEW OF APPLICATION FOR PROGRESS PAYMENT

Engineer will, within ten days after receipt of each Application for Payment, to either indicate in writing a recommendation of payment and present the Application to CITY, or return the Application to CONTRACTOR indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

Ten (10) days after presentation of the Application for Payment with Engineer's recommendation, the amount recommended will become due and when due will be paid by CITY to CONTRACTOR.

Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to CITY, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by CITY or CITY to withhold payment to CONTRACTOR.

Engineer's recommendation of final payment will constitute an additional representation by Engineer to CITY that the conditions precedent to CONTRACTOR's being entitled to final payment have been fulfilled.

Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to CITY. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously recommended; to such extent as may be necessary in Engineer's opinion to protect CITY from loss.

CITY may refuse to make payment of the full amount recommended by Engineer because claims have been made against CITY on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling CITY to a set-off against the amount recommended, but CITY must give CONTRACTOR immediate written notice (with a copy to Engineer) stating the reasons for such action.

65. SUBSTANTIAL COMPLETION

When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify CITY and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, CITY, CONTRACTOR and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify CONTRACTOR in writing giving the reasons therefore. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to CITY a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. CITY shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within fourteen days after submission of the tentative certificate to CITY notify CONTRACTOR in writing, stating the reasons therefore. If, after consideration of CITY's objections, Engineer considers the Work substantially complete, Engineer will within said fourteen days execute and deliver to CITY and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from CITY. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to CITY and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless CITY and CONTRACTOR agree otherwise in writing and so inform Engineer prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendations will be binding on CITY and CONTRACTOR until final payment.

CITY shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

66. INSPECTIONS, CORRECTION, REMOVAL OF DEFECTIVE WORK

Engineer and Engineer's representatives, other representatives of CITY, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

CONTRACTOR shall give Engineer timely notice of readiness of the Work for all required inspections or tests.

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with CITY's or Engineer's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by CITY (unless otherwise specified).

All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to CITY and CONTRACTOR (or by Engineer if so specified).

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given Engineer timely notice of CONTRACTOR's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

Neither observations by Engineer nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at CONTRACTOR's expense.

If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, CONTRACTOR, at Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Special Conditions. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Special Conditions.

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.

If required by Engineer, CONTRACTOR shall promptly either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

67. ACCEPTANCE OF DEFECTIVE WORK; CORRECTION OF DEFECTIVE WORK BY THE CITY

If, instead of requiring correction or removal and replacement of defective Work, CITY (and, prior to Engineer's recommendation of final payment) prefers to accept it, CITY may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to CITY's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to CITY.

If CONTRACTOR fails within a reasonable time after written notice of Engineer to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, CITY may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow CITY, CITY's representatives, agents and employees such access to the site as may be necessary to enable CITY to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of CITY in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by Engineer, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the

parties are unable to agree as to the amount thereof, CITY may make a claim. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by CITY of CITY's rights and remedies hereunder.

68. ARBITRATION

Before bringing any action in any court of competent jurisdiction pertaining to any claim, dispute or other matter in question arising out of or relating to the Contract Documents or the breach thereof, in an amount less than \$25,000, except for claims which have been waived by the making and acceptance of final payment, the claimant/objector (Party A) shall first offer to arbitrate the question(s) with the other party to the contract (Party B) by notifying him in writing and setting forth in such notice the question(s) to be arbitrated.

Party B can select to arbitrate or not. If Party B agrees to arbitrate he shall so advise Party A in writing within ten days after receipt of Party A's notice. Notice by Party B that he does not wish to arbitrate or failure of Party B to notify Party A within the ten-day period will give Party A the right to institute a court action.

If Party B agrees to arbitrate, the arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association except as modified herein. In such event, the agreement to arbitrate shall be specifically enforceable under the provisions of the Florida Arbitration Code, S682, Fla. Stat., as it may be from time to time amended. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

If Party B agrees to arbitrate, then Party A shall file its notice of demand for arbitration in writing with Party B and with the American Arbitration Association, and a copy shall be filed with the Engineer. Notice of demand for arbitration shall be served on the parties referred to herein no later than thirty days from the date Party B agrees to arbitrate the issues in question.

Failure to serve the notice of demand for arbitration shall constitute a waiver and abandonment of the claims for which arbitration is sought. Notice of demand for arbitration shall in no event be made on any claim, dispute or other matter in questions which would be barred by the applicable statute of limitations.

If the dollar amount of the claim exceeds \$25,000, arbitration may only be utilized if both Party A and party B agree to arbitrate.

The CONTRACTOR shall carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

The Florida Rules of Civil Procedure pertaining to discovery shall apply to both parties during arbitration, and, at the CITY's sole option, any and all arbitration arising out of or relating to any

of the Contract Documents or any breach thereof shall include by consolidation, joinder, or joint filing any additional person or entity not a party to this Agreement to the extent necessary for the final resolution of the matter in controversy.

At least one of the members of the arbitration panel must be an attorney licensed to practice law in the State of Florida.

The surety shall be bound by the arbitration award to the same extent as the CONTRACTOR is bound.

The arbitration panel shall submit a written opinion with findings of fact and conclusions of law stating the basis for the decision made, and including an award of arbitration that may be confirmed by a court of competent jurisdiction.

Unless CITY agrees to the contrary, the location of any and all arbitration proceedings shall be in Lake County, Florida.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.C.1.

Meeting Date: May 24, 2021

From: Robert Hicks, (Police Chief)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing and directing the Mayor and City Clerk to execute an agreement for One (1) School Resource Officer (SRO) position/service to be provided to Lake County School Board – Leesburg High School, for the summer term of 2021; and providing an effective date.

Staff Recommendation:

Staff recommends adopting an agreement for one (1) School Resource Officer (SRO) position/service to be provided to Lake County School Board – Leesburg High School - for the summer term of 2021 starting June 21, 2021 through July 22, 2021 (no school week of July 5 – 8) hours will be from 8:30 a.m. until 1:30 p.m.

Analysis:

We currently provide two School Resource Officers during the regular school year. This request will provide an extension for one officer, for sixteen days June 21 – July 22 (closed July 5- 8), five hours a day 8:30 a.m. – 1:30 p.m. totaling eighty hours for the period at the officers' rate of pay and benefits, as a continuation for Leesburg High School summer program.

Procurement Analysis:

N/A

Options:

1. Approve as presented; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

The cost of will reimbursed by Lake County School Board based on the officers rate of pay.
Account No. 001-0000-342-0200

Submission Date and Time: 5/19/2021 1:58:55 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING AND DIRECTING THE MAYOR AND CITY
CLERK TO EXECUTE AN AGREEMENT FOR ONE (1) SCHOOL RESOURCE
OFFICER (SRO) POSITION/SERVICE TO BE PROVIDED TO LAKE COUNTY
SCHOOL BOARD – LEESBURG HIGH SCHOOL, FOR THE SUMMER TERM
OF 2021; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA:**

THAT the Mayor and City Clerk are hereby authorized to execute an agreement with the Lake County School Board to provide School Resource Officer services to Leesburg High School for the Summer of 2021.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 24th day of May 2021.

Mayor

ATTEST:

City Clerk

**AGREEMENT BETWEEN THE SCHOOL BOARD OF LAKE COUNTY, FLORIDA,
AND THE CITY OF LEESBURG, FOR
SCHOOL RESOURCE OFFICER PROGRAM [SUMMER 2021]**

This **AGREEMENT** is entered into by and between the **City of Leesburg**, a Florida municipal corporation, hereinafter referred to as “**LAW ENFORCEMENT AGENCY**” and the **School Board of Lake County, Florida**, a political subdivision of the State of Florida, hereinafter referred to as “**SCHOOL BOARD**”.

WITNESSETH:

WHEREAS, the **SCHOOL BOARD** is seeking one (1) School Resource Officers (SRO) for its Summer program at Leesburg High School to interact with students during the class schedule and provide additional security to students, school personnel, the school community and school property; and

WHEREAS, the **LAW ENFORCEMENT AGENCY** is willing to place one (1) **City of Leesburg** Police Officer at Leesburg High School for the purpose of carrying out this school program.

NOW, THEREFORE, in and for consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree that the **LAW ENFORCEMENT AGENCY** will provide one (1) sworn **City of Leesburg** Police Officer who is certified pursuant to Section 943.10(1) *Florida Statutes* to the **SCHOOL BOARD** to act as SROs Leesburg High School under the terms and conditions of this Agreement.

1. Term of Agreement. The term of this Agreement shall be for the 2021 Summer Term, which is defined as nineteen (19) work days (Monday through Thursday), at five (5) hours per day (for the hours 8:30AM to 1:30PM), starting June 21, 2021 and ending July 22, 2021, except for the week of July 5 through 8, 2021.

2. Compensation. The **SCHOOL BOARD** will pay the City of Leesburg the sum of Forty-One and 10/100 dollars (\$41.10) per hour for the services provided under this Agreement. Such compensation shall be invoiced to the **SCHOOL BOARD** by the City of Leesburg on or before August 1, 2021. Invoices shall be paid within fifteen (15) days of receipt. In the event the

Board of County Commissioners of Lake County, Florida, agrees to pay for any or all of the deputies assigned to the schools pursuant to this Agreement, then City of Groveland agrees that SCHOOL BOARD may assign its obligation to pay under this section to the Board of County Commissioners of Lake County, Florida.

3. Scope. The LAW ENFORCEMENT AGENCY shall assign an SRO for Leesburg High School. The SROs shall interact with students and provide security at Leesburg High School. In addition, the SROs shall have the duties and responsibilities listed in Exhibit “A” attached hereto.

4. Background Investigations. The LAW ENFORCEMENT AGENCY represents and warrants to the SCHOOL BOARD that the LAW ENFORCEMENT AGENCY has read and is familiar with Sections 1012.32, 1012.465, 1012.467 and 1012.468, *Florida Statutes* regarding background investigations. The LAW ENFORCEMENT AGENCY covenants to comply with all requirements of the above-cited statutes and shall provide SCHOOL BOARD with proof of compliance upon request. The LAW ENFORCEMENT AGENCY agrees, to the extent permitted by law and only to the extent permitted by 768.28, *Florida Statutes*, to indemnify and hold harmless the SCHOOL BOARD, its officers, agents and employees from any liability in the form of physical injury, death, or property damage resulting from the LAW ENFORCEMENT AGENCY’s failure to comply with the requirements of this paragraph or Florida Statute Sections, 1012.32, 1012.465, 1012.467 and 1012.468, *Florida Statutes*. Any claim against the LAW ENFORCEMENT AGENCY by the SCHOOL BOARD under the preceding sentence shall not include punitive damages or any interest for the period before judgment. Additionally, the LAW ENFORCEMENT AGENCY shall not be liable pursuant to this indemnity to pay a claim or judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the LAW ENFORCEMENT AGENCY arising out of the incident or occurrence, exceeds the sum of \$300,000. Further, nothing in this paragraph shall be construed as an admission of liability on behalf of the LAW ENFORCEMENT AGENCY.

5. Assignment of Officers. The LAW ENFORCEMENT AGENCY shall determine which SROs will be assigned under this Agreement and will also determine the particular school

to which the SRO will be assigned to. The LAW ENFORCEMENT AGENCY shall provide a notice of the assigned SROs to the school principals of the three (3) designated schools. In the event that the principal of the school where the SRO is assigned believes that the particular SRO is not effectively performing his/her duties and responsibilities, the principal shall notify the SRO in writing. If the situation is not corrected within three (3) working days, the principal shall contact the SRO's immediate supervisor and the Superintendent's designee in writing and provide a copy of said notice to each of them. If the situation is not resolved to the mutual satisfaction of both the SRO's immediate supervisor and the Superintendent's designee within ten (10) days, or if, during the same contract period, the principal determines for a second time that the SRO is not effectively performing his/her duties and responsibilities, then the Principal shall recommend to the Superintendent that the SRO be removed from the program at his/her school, and shall state the reasons as well as the efforts to resolve the problems in writing. The Superintendent, or his/her designee, shall review the request and, if approved, shall provide written notification to the LAW ENFORCEMENT AGENCY who shall transfer the SRO or take other appropriate action within ten (10) business days. In the event the principal considers the SRO's conduct to present a threat to the safety or well-being of the students or staff, the principal will immediately notify the Superintendent and the LAW ENFORCEMENT AGENCY. Upon receipt of such notification, the LAW ENFORCEMENT AGENCY shall take appropriate action.

6. Dismissal/Replacement/Absence.

The LAW ENFORCEMENT AGENCY may dismiss or reassign SROs with or without cause. In the event of the resignation, dismissal, or reassignment of an SRO, or in the case of long-term absences by an SRO, the LAW ENFORCEMENT AGENCY shall provide a temporary replacement for the SRO as soon as practical.

7. Leaves/Coverage.

The Chief of Police or another designated scheduling officer will approve vacations, sick leaves, and other leaves of absence for the SRO. The SRO will communicate approved vacation, sick leaves, trainings or any other leave that impacts SRO presence in schools with the SCHOOL BOARD'S Safety and Security Specialist.

LAW ENFORCEMENT AGENCY shall provide coverage of an SRO during any time in which the SRO will be off campus of the school to include, but not be limited to vacations, sick leaves, other leaves of absence or due to other related assignments.

8. Hours of Assignment. The SRO will be stationed at Leesburg High School for the 2021 Summer Term, as defined in Paragraph 1, for five (5) hours per day for the hours 8:30AM to 1:30PM.

9. Additional Hours of Assignment. Additional hours of assignment during a two-week period may be made with prior approval of the LAW ENFORCEMENT AGENCY, if requested by the respective school principal. If the additional hours worked require that overtime be paid to the SROs, the SCHOOL BOARD will reimburse the LAW ENFORCEMENT AGENCY for overtime paid at the SRO's existing pay rate.

10. Off Campus Assignments. Upon the request of the respective school principal and with the prior approval of the LAW ENFORCEMENT AGENCY, an SRO's duties may occasionally include his/her assignment at school functions and activities that are held off campus.

11. Reassignment in Emergency Situations. Nothing in this Agreement shall prevent or interfere with the ability of the LAW ENFORCEMENT AGENCY to temporarily withdraw an assigned SRO from his/her post at Leesburg High School to respond to emergency situations as determined in the sole judgment and discretion of the LAW ENFORCEMENT AGENCY.

12. Supervising Authority. During the term of this Agreement, the SROs assigned shall remain employees of the LAW ENFORCEMENT, under the authority of the chain of command of the LAW ENFORCEMENT AGENCY and subject to all other rules and regulations of the LAW ENFORCEMENT AGENCY. The SROs will report to their respective school principal for assignment of duties and work schedules. Workers Compensation coverage, as required by law, will be provided for the officer by the LAW ENFORCEMENT AGENCY.

13. Salary and Benefits. The LAW ENFORCEMENT AGENCY will provide the salary and benefits to each SRO assigned, including uniforms and equipment and any applicable overtime pay as agreed to above.

14. Vehicle. The LAW ENFORCEMENT AGENCY will provide vehicles for SROs if or when determined necessary by the LAW ENFORCEMENT AGENCY.

15. Threats to School Safety.

A. Pursuant to Section 1006.13(4), *Florida Statutes*, any acts that pose a threat to school safety, whether committed by a student or adult, shall be reported to the School Principal, or his or her designee, who shall report the acts to the SRO and the School Board's School Safety Specialist.

B. If requested by the School Principal, or his or her designee, the SRO, or other appropriate law enforcement officers, shall assist in the investigation of the acts that pose a threat to school safety; upon conclusion of the investigation, the SRO shall report the findings of the investigation to the School Board's School Safety Specialist to properly document the disposition of the incident. Additionally, the School Principal, or his or her designee, shall consult with SRO concerning appropriate delinquent acts and crimes.

16. Termination of Agreement. This Agreement may be terminated by either party upon thirty (30) days written notice. Notice shall be deemed given as of the date of deposit of such written NOTICE in the course of transmission in the United States Postal Service and addressed as follows:

SCHOOL BOARD:

Superintendent of Schools
School Board of Lake County
201 West Burleigh Boulevard
Tavares, FL 32778

LAW ENFORCEMENT
AGENCY:

Chief of Police
City of Leesburg Police Department
115 East Magnolia Street
Leesburg, FL 34748

Upon termination pursuant to this subsection, payment will be made by the SCHOOL BOARD or reimbursement made by the LAW ENFORCEMENT AGENCY based on a pro rata charge for services for that portion of the school year covered by this Agreement prior to termination.

17. Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties with respect to the subject matter hereto and supersedes all prior Agreements, representations and understandings either oral, written or otherwise relating thereto.

18. E-Verify. The parties agree to comply with Section 448.095, *Florida Statutes*.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

“SCHOOL BOARD”

**THE SCHOOL BOARD OF LAKE COUNTY,
FLORIDA**

By: _____
William J. Mathias, Chairperson

Date: _____

Approved as to form:

Attest: _____
Diane S. Kornegay, Superintendent

School Board Attorney

“LAW ENFORCEMENT AGENCY”

CITY OF LEESBURG

By: _____
John Christian, Mayor

Date: _____

Approved as to form:

Attest: _____
City Clerk

Fred Morrison, City Attorney

EXHIBIT “A”

In addition to the routine duties and responsibilities of the SROs, the SROs shall have the following specific duties and responsibilities:

1. Each SRO shall at all times perform his/her duties in accordance with City of Leesburg Police Department’s standard operating procedures.
2. The SROs shall serve as resource instructors providing programs in crime prevention that encourage students to become responsible citizens.
3. The SROs shall also assist the orderly flow of traffic on school grounds.
4. Each SRO shall maintain all law enforcement powers, duties, and responsibilities inclusive of his/her position as City of Leesburg Police Officers while assigned to the SRO program.
5. Each SRO shall be responsible to his/her agency in all matters relating to employment, however, activities conducted by the SROs which are part of the regular school instruction program shall be under the direction of the principal or his/her designee.
6. Each SRO shall be at his/her school during normal school hours of operation. During times that the SROs are unable to be on campus or need to leave campus, those times will be coordinated with the principal or his/her designee and each SRO’s supervisor. The SRO supervisor will assure that the School has a replacement SRO on campus.
7. The SROs shall perform such duties as directed by his/her agency when school is not in session. The principal or his/her designee shall advise the Officers’ supervisor of the school’s calendar.
8. The SROs may contact students during school hours in conjunction with a criminal investigation so long as such contact does not interfere with or impede the orderly operation of the school or the rights of the individual students.
9. All student record information will be maintained in accordance with the provisions of Florida Statutes.
10. The SROs shall interface with students between class breaks, during lunch periods, before and after school and at school activities at which the SROs are in attendance. The SROs will not be assigned to a permanent school related duty post so as not to establish predictable patterns.
11. In the interest of maintaining a safe and orderly school environment, student and campus supervision is of critical importance. The SROs shall take a prominent role in supervision responsibilities, which shall be coordinated with and agreed to by the SROs and the designated

school principal. While school is in session, the SROs shall be present on and around the school campus except as permitted in paragraph 6 of this Exhibit A.

12. The SROs will serve as a referral resource for students, faculty and parents to community agencies.

13. The SROs will serve as a Law Enforcement resource to school administration and the district manager of security services.

14. The SROs shall be familiar and offer support with the plans and strategies for the prevention and control of dangerous situations at the school.

15. The SROs will coordinate activities with the school administration and the school guidance department in an effort to identify those students who exhibit indications of early delinquent behavior.

16. The SROs shall attend meetings of school faculty and requested administrative meetings during school hours on a regular basis.

17. The SROs shall not act as a school disciplinarian, as disciplining students is a school responsibility. However, the principal shall contact the SROs for any violations of the law, and the SROs shall determine whether law enforcement action is appropriate.

18. The SROs shall take law enforcement action as necessary and as permitted under Florida law and shall inform the school principal of such action unless it would impede a criminal investigation, under such circumstances as practical. The SROs shall take appropriate law enforcement action against intruders and unwanted guests who may appear at the school and related school functions, to the extent that the SROs may do so under the authority of law. Whenever practical, the SROs shall advise the principal before requesting additional law enforcement assistance on campus.

19. The SROs shall be informed by school personnel of any situation occurring on school grounds that would appear to be a violation of the law of criminal nature.

20. The SROs shall maintain detailed accurate records of his/her activities, and provide a written monthly report to the LAW ENFORCEMENT AGENCY who shall provide such information to the Safe Schools Department of the SCHOOL BOARD.

21. The SROs and school administration shall work together to keep each other informed during the course of all criminal investigations as permitted by law and as practical. This provision shall not be interpreted so as to interfere with or impede the SROs' law enforcement duties, obligations and/or powers.

22. The SROs shall work with school administration when determining whether an arrest should be made, or if there is an alternative solution to the incident which would still be in compliance with Florida law. The final decision on whether arrest is appropriate will lie with the

attending SRO or other law enforcement officer on scene at the incident. This provision shall not be interpreted so as to interfere with or impede the SROs' law enforcement duties, obligations or powers.

23. The SROs shall affect a physical arrest for felonies committed on school grounds, particularly those that are "Zero Tolerance", as permitted by law.

24. The SROs shall give assistance to other law enforcement officers and government agencies in matters regarding his/her school assignment, whenever necessary.

25. The parties shall comply with the provisions of the Family Educational Rights and Privacy Act ("FERPA").

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.C.2.

Meeting Date: May 24, 2021

From: Cliff Kelsey, (Public Works Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute Agreement #AP822 with the Florida Department of Transportation (FDOT) for participation in the State Highway Lighting, Maintenance, and Compensation Program; and providing an effective date.

Staff Recommendation:

Staff recommends authorization of Agreement #AP822 with the Florida Department of Transportation (FDOT) for continued eligibility in the State Highway Lighting, Maintenance, and Compensation Program.

Analysis:

The FDOT Highway Lighting, Maintenance, and Compensation Program was initiated in FY 97/98 in order to allow the FDOT to reimburse local governments for a portion of the cost to maintain and operate highway lighting on the State Highway System. The previous agreement has expired and is up for renewal. Agreement #AP822 has a term of seven years with a minimum two-year notice of termination clause for both parties. Prior to the beginning of FDOT's Fiscal Year, the City will submit an inventory to FDOT of state highway facilities to be maintained for reimbursement. Exhibit A of the attached document provides a current summary of the highway lights in the State Highway System that are located within the City of Leesburg limits and are eligible for reimbursement.

Procurement Analysis:

N/A

Options:

1. City Commission approval of Agreement #AP822 with FDOT; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

The annual amount eligible for reimbursement to the City has increased to \$192,785.67 for FY 21/22 from the FY 20/21 amount of \$187,172.37, an approximate 3% increase.

Account No. 001-0000-344-9300

Submission Date and Time: 5/19/2021 2:00:04 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE
AGREEMENT #AP822 WITH THE FLORIDA DEPARTMENT OF
TRANSPORTATION (FDOT) FOR PARTICIPATION IN THE STATE
HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION
PROGRAM; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA:**

THAT the Mayor and City Clerk are hereby authorized to execute an agreement with the State of Florida Department of Transportation whose address is 605 Suwannee Street, Tallahassee, Florida 32399-0458, for compensation of Highway Lighting and Maintenance.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 24th day of May 2021.

Mayor

ATTEST:

City Clerk

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**STATE HIGHWAY LIGHTING, MAINTENANCE, AND
COMPENSATION AGREEMENT**

375-020-52
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CONTRACT NO. AP822
FINANCIAL PROJECT NO. 413615-1-78-08
F.E.I.D. NO. VF-596000362-027

THIS AGREEMENT, entered into this 1st day of July, year of 2021, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as "**FDOT**", and City of Leesburg, hereinafter referred to as the "**MAINTAINING AGENCY**";

WITNESSETH:

WHEREAS, **FDOT** is authorized under Sections 334.044 and 335.055, Florida Statutes, to enter into this Agreement, and the **MAINTAINING AGENCY** has the authority to enter into this Agreement and to undertake the maintenance and operation of lighting on the State Highway System; and

WHEREAS, the **MAINTAINING AGENCY** has authorized its undersigned officers to enter into and execute this Agreement;

WHEREAS, **FDOT** has identified sites where lighting and/or lighting systems, hereinafter referred to as "Facilities", are located on the State Highway System within the jurisdictional boundaries of the **MAINTAINING AGENCY**. A list of the Facilities is included as Exhibit A, attached hereto and incorporated herein.

WHEREAS, the **MAINTAINING AGENCY** agrees to maintain the Facilities as further set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, **FDOT** and the **MAINTAINING AGENCY** hereby agree as follows:

1. Maintenance of Facilities

- a. The **MAINTAINING AGENCY** shall maintain the Facilities listed in Exhibit A. The Facilities may include lighting for roadways, as well as park and ride, pedestrian overpasses, and recreational areas owned by or located on the property of **FDOT**. The Facilities shall not include lighting located in weigh stations, rest areas, or on Interstate highways.

The location and type of lighting to be maintained pursuant to this Agreement is set forth in Exhibit A. Any changes or modifications to Exhibit A must be in writing and signed by both **FDOT** and the **MAINTAINING AGENCY**. Any Facilities added to Exhibit A during the **FDOT's** fiscal year shall be maintained and operated by the **MAINTAINING AGENCY** upon the **FDOT's** final acceptance of installation of any new lighting and/or lighting systems. Prior to the start of each new fiscal year, the **MAINTAINING AGENCY** and **FDOT** shall amend Exhibit A to reflect any changes to the Facilities, including addition, removal, or change in lighting type maintained pursuant to this Agreement.

The **MAINTAINING AGENCY** will be compensated for Facilities added to Exhibit A by amendment of this Agreement in the **FDOT's** fiscal year occurring after the lighting and/or lighting systems are installed and final acceptance of such installation is given by **FDOT**. In the event that no change is made to the previous year's Exhibit A, a certification from the **MAINTAINING AGENCY** shall be provided to **FDOT** certifying that no change has been made to Exhibit A during **FDOT's** previous fiscal year. Unless stated otherwise, all references to fiscal years within this agreement refer to **FDOT's** fiscal year, beginning July 1st and ending June 30th.

- b. In maintaining the Facilities, the **MAINTAINING AGENCY** shall perform all activities necessary to keep the Facilities fully operating, properly functioning, with a minimum of 90% of the lights burning for any lighting type (e.g., high mast, standard, underdeck, and sign) or roadway system at all times in accordance with the original design thereof, whether necessitated by normal wear and tear, accidental or intentional damage, or acts of nature. Required maintenance includes, but is not limited to, providing electrical power and paying all charges associated therewith, routine inspection and testing, preventative maintenance, emergency maintenance, replacement of any component parts of the Facilities (including the poles and any and all other component parts installed as part of the Facilities), and locating (both vertically and horizontally) the Facilities. All repairs or replacement will be in kind unless a variance is approved in writing by **FDOT**.

- c. All maintenance must be in accordance with the provisions of the following:
- (1) Manual of Uniform Traffic Control Devices; and
 - (2) All other applicable local, state, or federal laws, rules, resolutions, or ordinances, and **FDOT** procedures.
- d. For lighting installed as part of a **FDOT** project, the **MAINTAINING AGENCY's** obligation to maintain the Facility commences upon the **MAINTAINING AGENCY's** receipt of notification from **FDOT** that **FDOT** has formally accepted the project, except for the obligation to provide for electrical power, which obligation to provide for electrical power commences at such time as the lighting system is ready to be energized; provided, however, that the **MAINTAINING AGENCY** is not required to perform any activities which are the responsibilities of **FDOT's** contractor.

Prior to acceptance by **FDOT**, the **MAINTAINING AGENCY** shall have the opportunity to inspect and request modifications/corrections to the installation(s). **FDOT** agrees to make modifications/corrections prior to acceptance so long as the modifications/corrections comply with the installation contract documents and specifications.

- e. The term for this Agreement is seven (7) years. Either party may terminate this Agreement by a notice of termination. The notice of termination must be in writing. Should the **MAINTAINING AGENCY** choose to terminate the Agreement, the **MAINTAINING AGENCY** shall provide a minimum notice period of two (2) fiscal years prior to the effective date of termination and the notice shall be endorsed by the elected body (County Commission, City Council, or local agency governing body) under which the Agency operates. The effective date of the termination will coincide with the end of the **FDOT's** fiscal year of June 30th following the two-year notice.

The termination of this Agreement will not terminate maintenance responsibilities for lighting owned by the **MAINTAINING AGENCY**. Maintenance obligations for lights owned by the **MAINTAINING AGENCY** will remain the responsibility of the **MAINTAINING AGENCY**. Nor does termination of this Agreement operate to relieve the **MAINTAINING AGENCY** of any maintenance obligations contained in other agreements. Maintenance of lights governed by a separate maintenance agreement will continue per the terms of that separate maintenance agreement.

2. Compensation and Payment

FDOT shall pay to the **MAINTAINING AGENCY** a sum of \$ 192,785.67 for the fiscal year in which this Agreement is signed. Payments will be calculated and made in accordance with Exhibit A.

Prior to the beginning of each fiscal year, the **MAINTAINING AGENCY** shall submit an amended Exhibit A or a certification of no change to Exhibit A and **FDOT** and the **MAINTAINING AGENCY** shall agree on the amount and percentage of lighting to be paid for the coming fiscal year. **FDOT** will issue a work order confirming the amount and authorizing the performance of maintenance for each new fiscal year. The work order must be an **FDOT**-signed letter of authorization to the **MAINTAINING AGENCY** with a subject line containing the terms "State Highway Lighting, Maintenance, and Compensation Agreement work order". The work order must reflect the contract number, financial project number, FEID No. of the **MAINTAINING AGENCY**, the fiscal year, the percentage of lighting funded and the lump sum amount to be paid for the fiscal year indicated. The work order must be signed by the **MAINTAINING AGENCY** and returned to **FDOT**. Failure by the **MAINTAINING AGENCY** to take any of the actions required by this paragraph may result in nonpayment by **FDOT**.

FDOT expressly assigns its rights, interests and privileges pertaining to damage to Facilities caused by third parties to the **MAINTAINING AGENCY**, so they may pursue all claims and causes of actions against the third parties responsible for the damage. **FDOT** will assist the **MAINTAINING AGENCY** and will confirm the **MAINTAINING AGENCY's** authorization to pursue recovery. The **MAINTAINING AGENCY** will be responsible for all attorneys' fees and litigation costs incurred in its recovery activities.

3. Record Keeping

The **MAINTAINING AGENCY** shall keep records of all activities and report all maintenance performed and replacement components and parts installed pursuant to this Agreement. The records shall be kept in an electronic format approved by **FDOT**.

Records shall be maintained and made available upon request to **FDOT** during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records will be furnished to **FDOT** upon request.

4. Invoicing

The **MAINTAINING AGENCY** shall invoice **FDOT** annually in a format acceptable to the **FDOT**. Invoices must be submitted no earlier than May 1 and no later than June 15 of the fiscal year in which the services were provided in order to be processed for payment by June 30.

Upon receipt, **FDOT** has five (5) working days to inspect and approve the goods and services. **FDOT** has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the **MAINTAINING AGENCY**. Interest penalties of less than one (1) dollar will not be enforced unless the **MAINTAINING AGENCY** requests payment. Invoices returned to a **MAINTAINING AGENCY** because of **MAINTAINING AGENCY** preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to **FDOT**.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the Chief Financial Officer's Hotline, 1-800-848-3792.

The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. In the event this Agreement is in excess of \$25,000 and has a term for a period of more than one (1) year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

FDOT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection shall be null and void, and no money may be paid on such contract. **FDOT** shall require a statement from the Comptroller of **FDOT** that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of **FDOT** which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year.

5. Default

In the event that the **MAINTAINING AGENCY** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, **FDOT** may exercise one or more of the following options, provided that at no time may **FDOT** be entitled to receive double recovery of damages:

- a. Pursue a claim for damages suffered by **FDOT** or the public.
- b. Pursue any other remedies legally available.
- c. As to any work not performed by the **MAINTAINING AGENCY**, perform such work with its own forces or through contractors and seek reimbursement for the cost thereof from the **MAINTAINING AGENCY** if the **MAINTAINING AGENCY** fails to cure the non-performance within fourteen (14) days after written notice from **FDOT** of the non-performance; provided, however, that advance notice and cure will not be preconditions in the event of an emergency.

6. Force Majeure

Neither the **MAINTAINING AGENCY** nor **FDOT** will be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

7. Miscellaneous

- a. **FDOT** shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- b. The **MAINTAINING AGENCY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **MAINTAINING AGENCY** in conjunction with this Agreement. Failure by the **MAINTAINING AGENCY** to grant such public access will be grounds for immediate unilateral cancellation of this Agreement by **FDOT**.
- c. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Without limiting the generality of the foregoing, this Agreement shall replace and supersede all prior agreements between **FDOT** and the **MAINTAINING AGENCY** with respect to maintenance of the lighting and/or lighting systems for the Facilities identified in Exhibit A.
- d. This Agreement is governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable are severable and will not affect the validity of the remaining provisions hereof.
- e. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, electronic mail, or express mail and will be deemed to have been received by the end of five (5) business days from the proper sending thereof unless proof of prior actual receipt is provided. The **MAINTAINING AGENCY** must notify the local District of **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices must be sent to the following addresses:

MAINTAINING AGENCY:

City of Leesburg, FL

FDOT:

Leesburg Operations, FDOT

- f. **PUBLIC ENTITY CRIME INFORMATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for **CATEGORY TWO** for a period of thirty six (36) months from the date of being placed on the convicted vendor list.
- g. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

h. By signing this agreement the Maintaining Agency certifies that it is not: (1) listed on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S., (2) engaged in a boycott of Israel, (3) or listed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes. For contracts involving \$1,000,000 or more, if the Department determines the Maintaining Agency submitted a false certification under Section 287.135(5) of the Florida Statutes regarding the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes, or for contracts involving any amount, if the Maintaining Agency has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the Department shall either terminate the Contract after it has given the Maintaining Agency notice and an opportunity to demonstrate the Department's determination of false certification was in error pursuant to Section 287.135(5)(a) of the Florida Statutes, or maintain the Contract if the conditions of Section 287.135(4) of the Florida Statutes are met.

i. Nothing herein shall be construed as a waiver of either party's sovereign immunity.

j. **MAINTAINING AGENCY:**

1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **MAINTAINING AGENCY** during the term of the contract; and
2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the **Maintaining Agency** does not transfer the records to **FDOT**
4. Upon completion of the Agreement, transfer, at no cost, to **FDOT**, all public records in possession of the Consultant or keep and maintain public records required by **FDOT** to perform the service. If the Consultant transfers all public records to **FDOT** upon completion of the Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to **FDOT**, upon request from **FDOT's** custodian of public records, in a format that is compatible with the information technology systems of **FDOT**
5. Failure by the **Maintaining Agency** to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral cancellation of this Agreement by **FDOT**

IF THE MAINTAINING AGENCY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE MAINTAINING AGENCY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 1

863-519-2623

D1prcustodian@dot.state.fl.us

Florida Department of Transportation

District 1 – Office of General Counsel

801 N. Broadway

Bartow, FL 33830

District 6

305-470-5453

D6prcustodian@dot.state.fl.us

Florida Department of Transportation

District 6 – Office of General Counsel

1000 NW 111 Avenue

Miami, FL 33172-5800

District 2

386-758-3727

D2prcustodian@dot.state.fl.us

Florida Department of Transportation

District 2 - Office of General Counsel

1109 South Marion Avenue, MS 2009

Lake City, FL 32025

District 7

813-975-6491

D7prcustodian@dot.state.fl.us

Florida Department of Transportation

District 7 - Office of General Counsel

11201 N. McKinley Drive, MS 7-120

Tampa, FL 33612

District 3

850-330-1391

D3prcustodian@dot.state.fl.us

Florida Department of Transportation

District 3 - Office of General Counsel

1074 Highway 90 East

Chipley, FL 32428

Florida's Turnpike Enterprise

407-264-3170

TPprcustodian@dot.state.fl.us

Turnpike Enterprise Chief Counsel

Florida Turnpike – Office of General Counsel

Turnpike Mile Post 263, Bldg. 5315

Ocoee, FL 34761

District 4

954-777-4529

D4prcustodian@dot.state.fl.us

Florida Department of Transportation

District 4 – Office of General Counsel

3400 West Commercial Blvd.

Fort Lauderdale, FL 33309

Central Office

850-414-5355

COprcustodian@dot.state.fl.us

Office of the General Counsel

Florida Department of Transportation

605 Suwannee Street, MS 58

Tallahassee, Florida 32399-0458

District 5

386-943-5000

D5prcustodian@dot.state.fl.us

Florida Department of Transportation

District 5 – Office of General Counsel

719 South Woodland Boulevard

Deland, FL 32720

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**STATE HIGHWAY LIGHTING, MAINTENANCE, AND
COMPENSATION AGREEMENT**

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8. Certification

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **MAINTAINING AGENCY** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled "Changes to Form Document" and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **MAINTAINING AGENCY** hereby represents that no change has been made to the text of this document except through the terms of the Appendix entitled "Changes to Form Document."

You **MUST** signify by selecting one of the applicable options:

- ☐ No changes have been made to this Forms Document and no Appendix entitled "Changes to Form Document" is attached.
- ☐ No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first written.

MAINTAINING AGENCY

BY: (Signature) _____

(Printed Name: Amy Fleck)

Date: _____

(Printed Title: Public Works Deputy Director)

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

BY: (Signature) _____

(Printed Name: Philip Maggio, P.E.)

Date: _____

(Printed Title: Operations Engineer)

FDOT Legal Review

BY: (Signature) _____
Counsel

Date: _____

(Printed Name: _____)

Exhibit A
STATE HIGHWAY LIGHTING, MAINTENANCE, AND COMPENSATION AGREEMENT
For Fiscal Year 2021-2022

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the **MAINTAINING AGENCY** for the services described in this Agreement and method by which payments will be made.

2.0 FACILITIES

The lighting or lighting systems listed below, or in an attached spreadsheet, or other electronic form are included with this Agreement and represent the Facilities to be maintained by the **MAINTAINING AGENCY**:

1. SEE ATTACHED DOCUMENTS

2. _____

3. _____

4. _____

5. _____

6. _____

3.0 COMPENSATION

For the satisfactory completion of all services detailed in this Agreement, **FDOT** will pay the **MAINTAINING AGENCY** the Total Sum as provided in Section 2 of the Agreement. The **MAINTAINING AGENCY** will receive one single payment at the end of each fiscal year for satisfactory completion of service.

The per-light unit rate shall increase by 3% each fiscal year. E.g., the per-light unit rate of \$309.10 in fiscal year 2021-2022 shall increase to \$318.37 in fiscal year 2022-2023.

Total Payment Amount for each fiscal year is calculated by inputting the actual number of qualifying types of lights into the table below and multiplying by the unit rate and ____%. Example: 330 (lights) x \$_____ (unit rate) x 0.90 (90% requirement) = \$ 0.00

Type of Light	# of lights	LED or HPS	Unit rate	%	Total
High Mast		HPS		0.00	0.00
Standard	631	HPS		0.00	0.00
Underdeck	4	HPS		0.00	0.00
Sign	7	HPS		0.00	0.00
High Mast		LED		0.00	0.00
Standard		LED		0.00	0.00
Underdeck		LED		0.00	0.00
Sign		LED		0.00	0.00

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.A.1.

Meeting Date: May 24, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance of the City of Leesburg, Florida, establishing the Tara Oaks Community Development District pursuant to Chapter 190, Florida Statutes; providing for authority and power of the district; providing for the Board of Supervisors of the district; providing for the district budget; providing for functions of the district; providing for miscellaneous provisions; and providing an effective date. (Tara Oaks CDD-1)

Staff Recommendation:

Staff recommends approval of the request from Sayed Moukhtara to approve the creation of a Community Development District for the Tara Oaks subdivision.

Analysis:

The request is to approve the creation of a Community Development District for the Tara Oaks subdivision, which is generally located west of County Road 468 and south and east of Lewis Road as shown on the attached map. Community Development Districts are permitted under Chapter 190, Florida Statutes, and are a form of special purpose district which can be created to manage, finance and deliver basic community development services. These services include, but are not limited to, the financing, funding construction and operation of water and wastewater systems, roads, bridges, transit, shelters, environmental, conservation and mitigation areas, parks, plus schools and security measures. These services may vary from district to district. CDD's are specific to a described area, and have no zoning, development permitting or police power, and have no authority to encumber debt to a local government. Each district must remain in compliance with the local government's comprehensive plan.

Currently, the City has one Community Development District, which encompasses the Arlington Ridge subdivision located just south of the intersection of U.S. Highway 27 and County Road 48.

Approval of this request does not create a negative impact for the City's comprehensive plan or the surrounding property owners.

Procurement Analysis:

N/A

Options:

1. Approve the proposed ordinance creating a Community Development District for the Tara Oaks subdivision, or
2. Other such action as the Commission may deem appropriate.

Fiscal Impact:

Property owners within Community Development District areas are solely responsible for the funding, financing and maintenance of activities of the district; therefore no direct fiscal impact is anticipated.

Submission Date and Time:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, ESTABLISHING THE TARA OAKS COMMUNITY DEVELOPMENT DISTRICT PURSUANT TO CHAPTER 190, FLORIDA STATUTES; PROVIDING FOR AUTHORITY AND POWER OF THE DISTRICT; PROVIDING FOR THE BOARD OF SUPERVISORS OF THE DISTRICT; PROVIDING FOR THE DISTRICT BUDGET; PROVIDING FOR FUNCTIONS OF THE DISTRICT; PROVIDING FOR MISCELLANEOUS PROVISIONS; AND PROVIDING AN EFFECTIVE DATE. (TARA OAKS CDD-1)

WHEREAS, Sayed Moukhtara (the “Petitioner”) has petitioned the City Commission for the City of Leesburg, Florida, (the “City”) to adopt an ordinance establishing the boundaries of the Tara Oaks Community Development District (the “District”) pursuant to Chapter 190, Florida Statutes, and granting certain special powers; and

WHEREAS, the City, in determining whether to establish the District boundaries, has considered and finds that all statements contained in the Petition to establish the Tara Oaks Community Development District (“the Petition”) are true and correct; and

WHEREAS, the City has considered and finds that the establishment of the District is not inconsistent with any applicable element or portion of the applicable Comprehensive Plan; and

WHEREAS, the City has considered and finds that the area of land within the District is a sufficient size, is sufficiently compact, and is sufficiently contiguous to be developed as a functional interrelated community; and

WHEREAS, the City has considered and finds that the District is the best alternative for delivering the community development services and facilities to the area that will be served by the District; and

WHEREAS, the City has considered and finds that the community development services and facilities of the District will not be incompatible with the capacity and uses of exiting local and regional community development services and facilities; and

WHEREAS, the city has considered and finds that the area that will be served by the District is amenable to separate special –district government; and

WHEREAS, a duly noticed public hearing on the Petition was held prior to the adoption of this Ordinance establishing the District.

NOW THEREFORE, BE IT ORDAINED by the City Commission of the City of Leesburg, Florida, as follows:

SECTION 1: AUTHORITY. This ordinance is adopted in compliance with and pursuant to the Uniform Community Development Act of 1980, Chapter 190, Florida Statutes (2020).

SECTION 2: DISTRICT NAME. There is hereby created a community Development district situated entirely within incorporated Leesburg, Florida, which District shall be known as the

"Tara Oaks Community Development District."

SECTION 3: EXTERNAL BOUNDARIES OF THE DISTRICT. The external boundaries of the District are described in Exhibit A attached hereto, the overall parcel containing 194.15 acres of land, more or less.

SECTION 4: FUNCTIONS AND POWERS. The powers and functions of the District are described in Chapter 190, Florida Statutes (2020) as may be amended from time to time. The Charter of the District shall be as set forth in Chapter 190, Florida Statutes, as created by general law. The District's Board of Supervisors may further exercise certain additional powers to finance, fund, plan, establish, acquire, construct, reconstruct, enlarge or extend, equip, operate and maintain systems facilities for (a) parks and facilities for indoor and outdoor recreational, cultural and educational uses; and (b) security, including but not limited to, guardhouses, fences and gates, electronic intrusion-detection systems, and patrol cars, when authorized by applicable governmental agencies; except that the District may not exercise any police power, but may contract with the City for an increased level of such services within the proposed District boundaries, all as authorized and described by Section 190.012(2), Florida Statutes. The District shall not provide utility service (water, wastewater reuse, electricity, cable television, telephone or other telecommunications, dial up or broadband internet, solid waste collection and disposal, or any other utility service.

SECTION 5: BOARD OF SUPERVISORS. The five persons designated to serve as initial members of the Districts Board of Supervisors are:

Name: Sylvia Moukhtara Nemer
Address: 7717 NW 20th Lane
Gainesville, Florida 32605

Name: Chris Gumer
Address: 1135 NW 23rd Ave. Suite G
Gainesville, Florida 32609

Name: Chris Potts
Address: 3530 NW 43rd Street
Gainesville, Florida 32606

Name: Michel Moukhtara
Address: 1035 SE Lake Lane
Gainesville, Florida 32656

Name: Clifton Fischer
Address: 5504 Haines Road N.
St. Petersburg, Florida 33714

All of the above listed persons are residents of the State of Florida and citizens of the United States of America.

SECTION 6: NOTICE TO PURCHASERS. Any and all agreements for the sale of property within the boundaries of the district must include the disclosure statement required in

Section 190.048, Florida Statutes (2020) or any successor provision thereto. This requirement shall apply not only to the initial sale of a parcel, but also to all subsequent sellers, successors and assigns, for the life of the District.

SECTION 7: SEVERABILITY. If any provision of this Ordinance, or the application thereof, is finally determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be deemed to be severable and the remaining provisions shall continue in full force and effect provided that the invalid, illegal or unenforceable provision is not material to the logical and intended interpretation of this Ordinance.

SECTION 8: EFFECTIVE DATE. This Ordinance shall take effect upon its passage and adoption pursuant to general law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the 24th day of May 2021.

THE CITY OF LEESBURG, FLORIDA

Mayor

ATTEST:

City Clerk

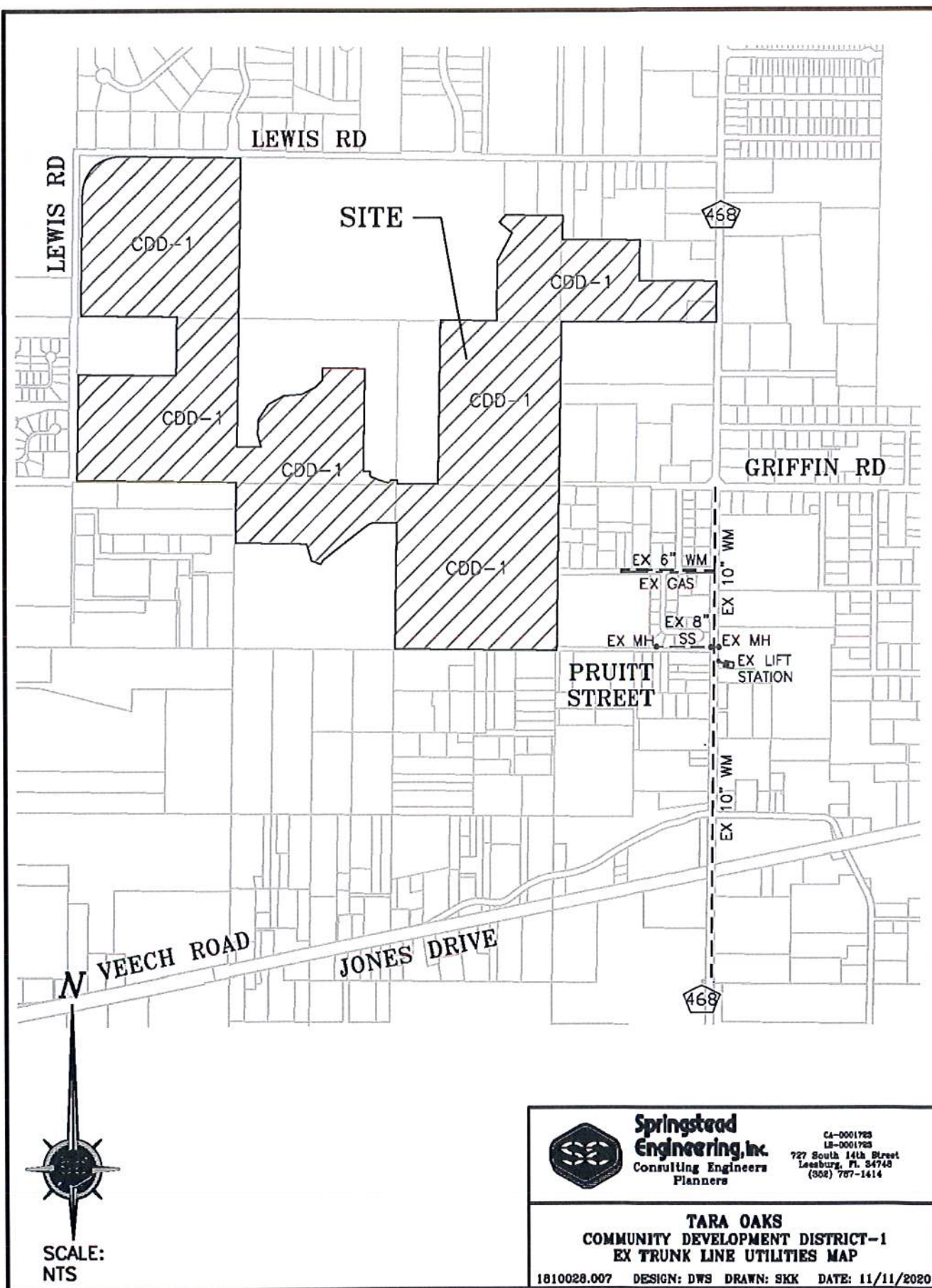
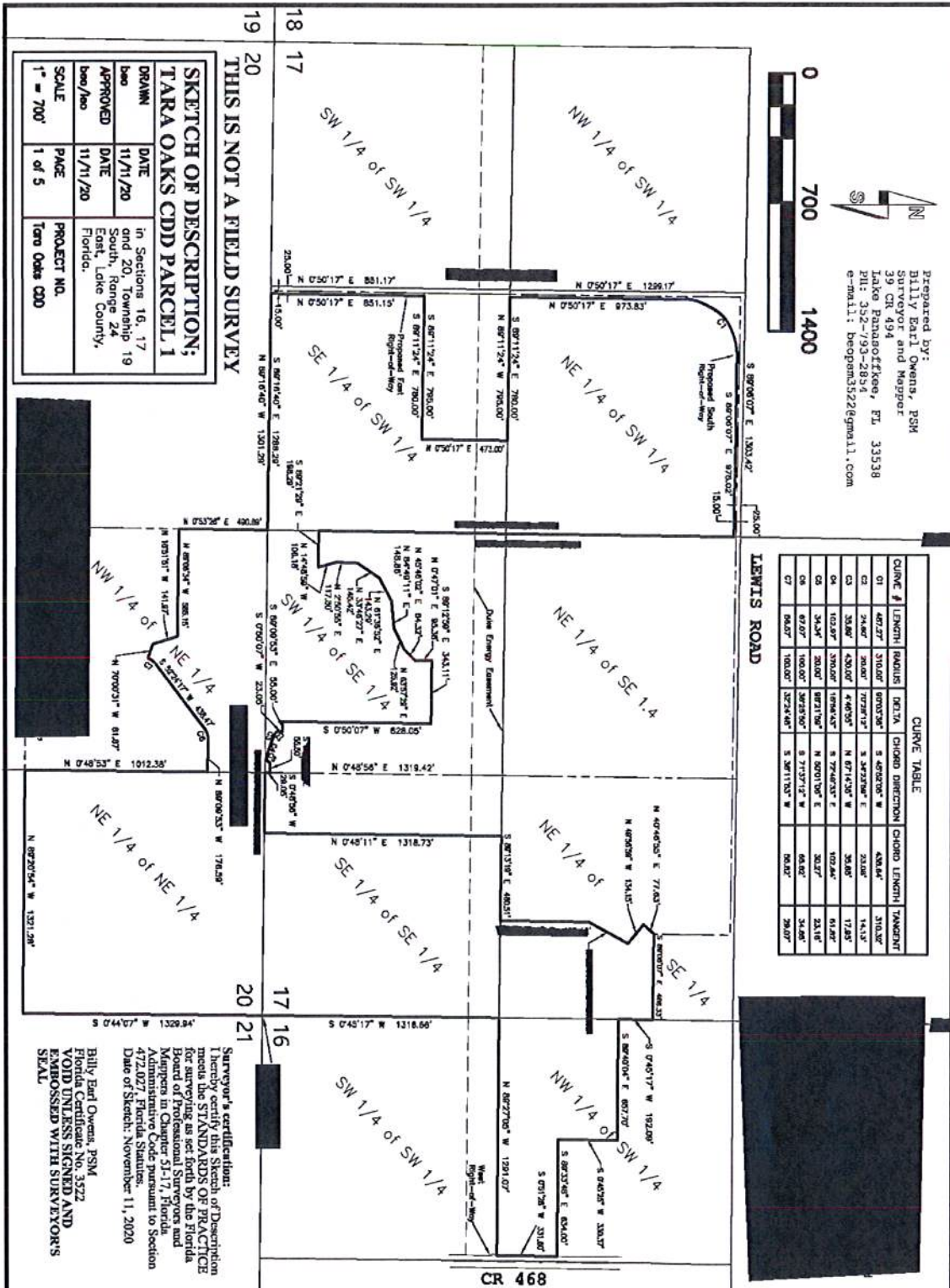


EXHIBIT A



TARA OAKS PARCEL 1 CDD DESCRIPTION

In Sections 16, 17 and 20, Township 19 South, Range 24 East, Lake County, Florida
November 11, 2020

That part of Sections 16, 17 and 20, Township 19 South, Range 24 East, Lake County, Florida, described as follows; Begin at the northeast corner of said Section 20 and run S 00°44'07" W, along the east boundary of the Northeast ¼ of the Northeast ¼ of said Section 20, a distance of 1329.94 feet, to the southeast corner of said Northeast ¼ of the Northeast ¼; thence N 89°20'54" W, along the south boundary of said Northeast ¼ of the Northeast ¼, a distance of 1321.28 feet, to the southwest corner of said Northeast ¼ of the Northeast ¼; thence N 00°48'53" E, along the west boundary of said Northeast ¼ of the Northeast ¼, a distance of 1012.38 feet; thence leaving said west boundary, run N 89°09'53" W, a distance of 176.59 feet, to the Point of Curvature of a curve concave southerly and having a radius of 100.00 feet; thence westerly, along the arc of said curve, through a central angle of 38°25'50", a distance of 67.07 feet, to the Point of Tangency; thence S 52°24'17" W, a distance of 438.47 feet, to the Point of Curvature of a curve concave southeasterly and having a radius of 100.00 feet; thence southwesterly, along the arc of said curve, through a central angle of 32°24'48", a distance of 56.57 feet, to the Point of Tangency; thence N 70°00'31" W, a distance of 81.87 feet; thence N 16°51'51" W, a distance of 141.97 feet; thence N 89°06'34" W, a distance of 585.15 feet, to the west boundary of the Northwest ¼ of the Northeast ¼ of the aforesaid Section 20; thence N 00°53'26" E, along said west boundary, a distance of 490.69 feet, to the northwest corner of the Northwest ¼ of the Northeast ¼ of Section 20, same being the southeast corner of the Southeast ¼ of the Southwest ¼ of the aforesaid Section 17, Township 19 South, Range 24 East; thence N 89°16'40" W, along the south boundary of said Southeast ¼ of the Southwest ¼, a distance of 1286.29 feet, to the proposed east right-of-way of LEWIS ROAD; thence N 00°50'17" E, along said proposed east right-of-way, a distance of 851.15 feet; thence leaving said east right-of-way, run S 89°11'24" E, a distance of 780.00 feet; thence N 00°50'17" E, a distance of 473.00 feet; thence N 89°11'24" W, a distance of 780.00 feet, to the aforesaid proposed east right-of-way of LEWIS ROAD; thence N 00°50'17" E, along said east right-of-way, a distance of 973.83 feet, to the Point of Curvature of a curve concave southeasterly and having a radius of 310.00 feet; thence northeasterly, along the arc of said curve, and proposed right-of-way for LEWIS ROAD, through a central angle of 90°03'36", a distance of 487.27 feet, to the Point of Tangency, said point being on the proposed south right-of-way of said LEWIS ROAD; thence S 89°06'07" E, along said proposed south right-of-way, a distance of 978.02 feet, to the east boundary of the Southwest ¼ of the aforesaid Section 17; thence S 00°53'00" W, along said east boundary, a distance of 2319.36 feet; thence leaving said east boundary, run S 89°21'29" E, a distance of 198.29 feet; thence N 14°48'59" W, a distance of 106.18 feet; thence N 02°50'55" E, a distance of 117.80 feet; thence N 33°46'27" E, a distance of 145.42 feet; thence N 61°36'52" E, a distance of 143.29 feet; thence N 84°49'11" E, a

distance of 148.86 feet; thence N 63°57'29" E, a distance of 125.92 feet; thence N 45°46'02" E, a distance of 84.32 feet; thence N 00°47'01" E, a distance of 95.38 feet; thence S 89°12'59" E, a distance of 343.11 feet; thence S 00°50'07" W, a distance of 828.05 feet; thence S 89°09'53" E, a distance of 55.00 feet; thence S 00°50'07" W, a distance of 23.05 feet, to the Point of Curvature of a curve concave northeasterly and having a radius of 20.00 feet; thence southeasterly, along the arc of said curve, through a central angle of 70°28'12", a distance of 24.60 feet, to a Point of Reverse Curve; thence run easterly, along the arc of said reverse curve concave southwesterly and having a radius of 430.00 feet, through a central angle of 04°46'55", a distance of 35.89 feet, to a Point of Reverse Curve; thence run easterly along the arc of said reverse curve concave northerly and having a radius of 370.00 feet, through a central angle of 15°56'43", a distance of 102.97 feet, to the Point of Compound Curve; thence along the arc of said compound curve concave northerly and having a radius of 20.00 feet; thence northeasterly, along the arc of said curve, through a central angle of 98°21'59", a distance of 34.34 feet, to the Point of Tangency; thence S 89°11'04" E, a distance of 55.50 feet, to the east boundary of the Southwest ¼ of the Southeast ¼ of the aforesaid Section 17; thence S 00°48'56" W, along said east boundary, a distance of 29.05 feet, to the southeast corner of said Southwest ¼ of the Southeast ¼, same being the southwest corner of the Southeast ¼ of the Southeast ¼ of Section 17; thence S 89°20'30" E, along the south boundary of said Southeast ¼ of the Southeast ¼, a distance of 329.80 feet; thence N 00°48'11" E, a distance of 1318.73 feet, to the north boundary of said Southeast ¼ of the Southeast ¼; thence S 89°13'19" E, along said north boundary, a distance of 460.51 feet; thence N 00°46'41" E, a distance of 485.12 feet; thence N 28°14'24" E, a distance of 249.98 feet; thence N 49°56'59" W, a distance of 134.15 feet; thence N 40°46'55" E, a distance of 77.63 feet; thence S 89°06'07" E, a distance of 466.33 feet, to the east boundary of said Northeast ¼ of the Southeast ¼, of Section 17, same being the west boundary of the Northwest ¼ of the Southwest ¼ of Section 16, Township 19 South, Range 24 East; thence S 00°45'17" W, along said boundary line, a distance of 192.09 feet; thence S 89°40'04" E, a distance of 657.70 feet; thence S 00°45'25" W, a distance of 330.37 feet; thence S 89°33'48" E, a distance of 634.00 feet, to the west right-of-way of COUNTY ROAD 468; thence S 00°51'28" W, along said west right-of-way, a distance of 331.60 feet; thence leaving said west right-of-way, run N 89°27'05" W, a distance of 1291.07 feet, to the southwest corner of the Northwest ¼ of the Southwest ¼, of the aforesaid Section 16, same being the northeast corner of the Southeast ¼ of the Southeast ¼ of the aforesaid Section 17, Township 19 South, Range 24 East; thence S 00°45'17" W, along the east boundary of said Southeast ¼ of the Southeast ¼, a distance of 1316.66 feet, to the Point of Beginning and end of this description.

Area described contains 194.15 acres.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.A.2.

Meeting Date: May 24, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance amending the Comprehensive Plan of the City of Leesburg, Florida, changing the Future Land Use designation of certain property containing approximately 4.87 acres, from Institutional to Low Density Residential, for a property generally located west of Lee Street, south of West Line Street and east of Perkins Street, as legally described in Section 26, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date. (*Lee Street Village FLUM*)

Staff Recommendation:

The Planning and Zoning Staff and Planning Commission recommend approval of the request to amend the Comprehensive Plan Future Land Use map for the subject property from Institutional to Low Density.

Analysis:

The project site is approximately 4.87 +/- acres, and is generally located on the west side of Lee Street and north of Herndon Street, as shown on the attached maps. It is the site of the abandoned Lee School. At this time, the property is vacant. The proposal will allow for a mixed use residential project, consisting of repurposing the Lee School south building with apartments and constructing townhouses on the remaining property. The existing land uses surrounding the property are residential and institutional. City of Leesburg utilities are available.

The Planning Commission held a public hearing on the application on January 21, and recommended approval by a vote of 5-0.

Procurement Analysis:

N/A

Options:

1. Approve the proposed Future Land Use Map amendment from Institutional to Low Density Residential; or
2. Other such action as the Commission may deem appropriate.

Fiscal Impact:

No direct fiscal impact is anticipated as a result of this action.

Submission Date and Time:

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF LEESBURG, FLORIDA, CHANGING THE FUTURE LAND USE DESIGNATION OF CERTAIN PROPERTY CONTAINING APPROXIMATELY 4.87 ACRES, FROM INSTITUTIONAL TO LOW DENSITY RESIDENTIAL, FOR A PROPERTY GENERALLY LOCATED WEST OF LEE STREET, SOUTH OF WEST LINE STREET AND EAST OF PERKINS STREET, AS LEGALLY DESCRIBED IN SECTION 26, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. (LEE STREET VILLAGE FLUM)

WHEREAS, the City Commission has received written objections, recommendations, and comments from the City of Leesburg Planning Commission acting as the Local Planning Agency, regarding amendment of the Comprehensive Plan of the City of Leesburg, and has made recommendations to the City Commission for amendment of the Plan; and

WHEREAS, the City Commission of the City of Leesburg has held public hearings on the proposed amendment to the plan, in light of written comments, proposals and objections from the general public;

NOW, THEREFORE,

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA, that:

Section 1.

The Growth Management Plan of the City of Leesburg, adopted by the City of Leesburg on December 10, 2012, pursuant to the Community Planning Act of 2011, Chapter 163, Part II, Florida Statutes, after public hearings by the City of Leesburg Planning Commission, is hereby amended in the following manner:

The Future Land Use Map is amended by changing the designation of an approximate 4.87 acre parcel of land generally located on the west of Lee Street and north of Herndon Street Institutional to Low Density, as shown on Attachment 1, the revised map of said area., lying in Section 26, Township 19 South, Range 24 East, Lake County, Florida, legally described as:

Legal Description (See Exhibit A)

Section 2.

All ordinances or part of ordinances in conflict with any of the provisions of this ordinance are hereby repealed.

Section 3.

This ordinance shall become effective upon its passage and adoption, according to law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the 24th day of May 2021.

THE CITY OF LEESBURG, FLORIDA

Mayor

ATTEST:

City Clerk

LEGAL DESCRIPTION

EXHIBIT A

All of Block 6, CITY OF LEESBURG, according to the map or plat thereof as recorded in Plat Book 2, Page 19, Public Records of Lake County, Florida, LESS the South 15 feet of Lots 7 and 8, and the East 15 feet of Lots 1, 4, 5 and 8, all in Block 6, CITY OF LEESBURG, conveyed to the City of Leesburg as street right of way.

Parcel Identification Number: 2619243900-006-00000

**CITY OF LEESBURG PLANNING & ZONING DIVISION
STAFF SUMMARY**

DATE: January 21, 2021
OWNER: Prospera Senior Living, LLC
PETITIONER: Greg Beliveau, LPG URP
PROJECT: Lee School Mixed Use Development
REQUEST: Small Scale Comprehensive Plan amendment
CASE NO.: SSCP-20-291

GENERAL LOCATION:

The property is generally located north of West Main Street, west of Lee Street, south of West Line Street and east of Perkins Street.

FUTURE LAND USE DESIGNATION:

Low Density Residential

SURROUNDING FUTURE LAND USE DESIGNATION:

North – Low Density Residential
South – Low Density Residential
East – Low Density Residential
West – Low Density Residential

PROPOSED FUTURE LAND USE DESIGNATION: Low Density Residential

EXISTING ZONING DESIGNATION: SPUD (Small Planned Unit Development)

SURROUNDING ZONING DESIGNATIONS:

North – R-2 (Medium Density Residential)
South – R-2 (Medium Density Residential)
East – R-2 (Medium Density Residential)
West – R-1 (Low Density Residential)

PROPOSED ZONING DESIGNATION:

SPUD (Small Planned Unit Development)

EXISTING LAND USE: Former Lee School, vacant buildings

SURROUNDING LAND USE:

North – Single Family Residential; Multi-Family Residential
South – Single Family Residential; Multi-Family Residential
East – Institutional
West – Single Family Residential

PROPOSED LAND USE: Mixed use residential development

**CITY OF LEESBURG PLANNING & ZONING DIVISION
DEPARTMENTAL REVIEW SUMMARY**

DATE: January 6, 2021
OWNER: Prospera Senior Living, LLC
PETITIONER: Greg Beliveau, LPG URP, LLC
PROJECT: Lee School Property Redevelopment
REQUEST: SSCP (Small Scale Comprehensive Plan), SPUD (Small Planned Unit Development)
CASE NO.: SSCP-20-291, SPUD-20-292

THE FOLLOWING COMMENTS RECEIVED FROM EACH DEPARTMENT:

POLICE

No comments received as of 1/15/21

FIRE

No comments from Fire Department. Amanda Stevenson 1/15/21

ELECTRIC

Electric has no objections. All services will be underground. Additional easements will be required when it comes through the DRC process. Steve Davis 1/6/21

GAS

No comments received as of 1/15/21

GIS

No comments received as of 1/15/21

BUILDING

No comments received as of 1/15/21

PUBLIC WORKS

No comments received as of 1/15/21

ADDRESSING

No comments received as of 1/15/21

ECONOMIC DEVELOPMENT

No comments received as of 1/15/21

LAKE COUNTY PUBLIC WORKS

No comments received as of 1/15/21

LAKE COUNTY SCHOOLS

Lake County Schools comment:

The Lee Street Village small-scale comprehensive plan amendment and the small planned unit development propose residential uses – a mix of apartments and townhomes. Please be advised that residential development is subject to school concurrency review. If the project is intended as a Senior Living Facility,

please provide documentation. Let me know if you have any questions. Thanks, Helen LaValley 1/12/21

PUBLIC RESPONSES

Approval

No comments received as of 1/15/21

Disapproval

No comments received as of 1/15/21

Notice of Appearance filed:

PUBLIC COMMENTS (APPROVAL)

PUBLIC COMMENTS (DISAPPROVAL)

PUBLIC COMMENTS (UNDECIDED)



**CITY OF LEESBURG PLANNING & ZONING DIVISION
RECOMMENDATIONS**

DATE: January 21, 2021
OWNER: Prospera Senior Living, LLC
PETITIONER: Greg Beliveau, LPG URP
PROJECT: Lee Street Village
REQUEST: Small Scale Comprehensive Plan Amendment
CASE NO.: SSCP-20-291

THE PLANNING & ZONING DIVISION RECOMMENDS:

APPROVAL of the request for the following reason(s):

1. This project meets the requirements of Chapter 163.3187(1) (c) Florida Statutes, for Small Scale Comprehensive Plan Amendments.
2. The proposed Future Land Use designation of Low Density Residential is compatible with the surrounding adjacent properties having Future Land Use designations of Low Density Residential and Institutional.
3. The proposed zoning designation of SPUD (Small Planned Unit Development) is compatible with surrounding adjacent property having zoning of R-1 (Low Density Residential) and R-2 (Medium Density Residential).
4. The proposed future land use designation for the site is consistent with the City's Growth Management Plan, Future Land Use Element, Goal I, Objective 1.6.

Action Requested:

1. Vote to approve the Small Scale Comprehensive Plan designation from City of Leesburg Institutional to City of Leesburg Low Density Residential and forward the recommendation to the City Commission for consideration.



DRAFT SUMMARY MINUTES OF THE REGULAR MEETING
OF THE PLANNING COMMISSION
VENETIAN CENTER
THURSDAY, JANUARY 21ST, 2020 - 4:30 P.M.

The Planning Commission of the City of Leesburg held its regular meeting Thursday, January 21st, 2021, at Venetian Center.

Chairman Ted Bowersox called the meeting to order at 4:30 p.m.

The following Commission members were present:

Tim Sennett – Vice-Chairman
Frazier Marshall
Michael Fitzpatrick
Alfred Haliday
Nathaniel Sanders
Ze'Shieca Carter

The following Commission members were absent:

Ted Bowersox
John O'Kelley
Chris Wood

City staff in attendance included Dan Miller, Planning & Zoning Manager, Dianne Pacewicz, Planner, Kandi Harper, Senior Planner, Sabrina Mitchell, Administrative Assistant II, and City Attorney Fred Morrison was also present.

The meeting opened with an invocation given by Vice-Chairman Sennett, followed by the Pledge of Allegiance to the Flag.

Dan Miller informed the audience of the rules of participation and the need to sign the speaker's registry. He also informed Commissioners and the audience that the City Commission meeting dates are tentatively scheduled.

**DRAFT SUMMARY MINUTES OF THE PLANNING COMMISSION MEETING
FOR THURSDAY, DECEMBER 17TH, 2020**

Commissioner Carter moved to APPROVE the draft minutes from the DECEMBER 17TH, 2020 meeting. Commissioner Fitzpatrick SECONDED the motion, which PASSED by a vote of 6- 0.

NEW BUSINESS

Vice-Chairman Sennett called for the sixth case under new business be brought forward.

**1. PUBLIC HEARING CASE # SSCP-20-291 – LEE STREET VILLAGE –
SMALL SCALE COMPREHENSIVE PLAN AMENDMENT**

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF LEESBURG, CHANGING THE FUTURE LAND USE DESIGNATION OF CERTAIN PROPERTY CONTAINING APPROXIMATELY 4.87 ACRES FROM INSTITUTIONAL TO LOW DENSITY RESIDENTIAL FOR A PROPERTY GENERALLY LOCATED NORTH OF WEST MAIN STREET, WEST OF LEE STREET, SOUTH OF WEST LINE STREET AND EAST OF PERKINS STREET AS LEGALLY DESCRIBED IN SECTION 26, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Mr. Miller stated the projects come in pairs, the final two projects are related.

Dan Miller introduced case number #SSCP-20-291 – Lee Street Village – Small Scale Comprehensive Plan Amendment and case number #SPUD-20-292 – Lee Street Village – Small Planned Unit Development Rezoning into the record and entered the exhibits into the record with maps and photo exhibits including aerial, zoning, future and surrounding land use, wetlands/flood zone maps, CRA maps, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the subject property, location current zoning, requests,

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Mr. Miller read the Staff Recommendations for both cases into the record; Staff recommended approval for both cases.

Vice-Chairman Sennett stated if any questions from Staff.

Greg Beliveau of LPG in Mt. Dora gave a brief presentation of the subject property, went through process of proposed LDR's; Historic Board; reviewed plans; approved, Staff reviewed, Staff; went through Southern building of Lee School; Phase 1; add 14 apartments, northern structure removed; construction of townhomes, Phase 1 & 2; renovation of Historic structure; Phase 1, interior walls; very thick; Historic classrooms; one apartment unit, 2 floors; apartments, basement; recreation areas, break rooms, Wi-Fi, outside retain look; windows replaced; modern look, elevators; removed, interior; renovated, wood floors; good shape, wood raptors, make sure meet code, Phase 2; access, driveways, parking; onsite recreational components, minimal parking; adjacent street, connectivity; proximity property; downtown, increase densities, downtown master plan; more opportunity, Villages; moving multi-family; downtown, mixed uses; encourage downtown growth, and look forward for your recommendations for approval, and people looking at units; no pre-sale allowed, and conceptual plan.

Commissioners and Mr. Miller discussed individually owned, elevations; outside owner's ready to move on this project; assisted living, same owners, not impressed with the outside, price range, Phase 1 individually owned, and parking spaces per unit.

Greg Beliveau gave a presentation to address comments from Commissioners regarding proposed development, townhouses; individually owned; intent, elevations same, architect working on elevations; tuned to Lee School, owner's time table; last year, behind schedule; move now, Phase 1 done; ASAP, walk through; Bldg. Dept, submit Bldg. Dept; during process, gentlemen wants to move now, don't know price range; market rate; not over 200K to 230K; townhomes; or lower, Phase 1; apartments; all rentals, each unit; garage/driveway; two parking spaces, floor plan; garage; first floor and two floors above.

Mr. Miller went over the elevations in the (PUD); trying to show range. Dan Miller stated different ownership, previous owner sold to the gentlemen making application, different ownership; last year; trip to headquarters; seen results; done, and this is the best one we had in a long time.

Vice-Chairman Sennett stated any questions from the public, and then closed the discussion from the public.

Vice-Chairman Sennett entertained a motion, and then the voting took place.

Commissioner Fitzpatrick made a MOTION for APPROVAL of case # SSCP-20-291 – LEE STREET VILLAGE – SMALL SCALE COMPREHENSIVE PLAN AMENDMENT Commissioner Carter SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

Vice-Chairman Sennett called for the seventh case under new business be brought forward.

2. PUBLIC HEARING CASE # SPUD-20-292 – LEE STREET VILLAGE – SMALL PLANNED UNIT DEVELOPMENT REZONING

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE DEVELOPMENT CONDITIONS ON A SPUD (SMALL PLANNED UNIT

DEVELOPMENT) ZONING ON APPROXIMATELY 4.87 ACRES TO ALLOW FOR RESIDENTIAL DEVELOPMENT FOR A PROPERTY GENERALLY LOCATED NORTH OF WEST MAIN STREET, WEST OF LEE STREET, SOUTH OF WEST LINE STREET AND EAST OF PERKINS STREET AS LEGALLY DESCRIBED IN SECTION 26, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. (CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021) (Lee Street Village)

Dan Miller read into the record a request on page three under development standards to delete phrase (6h); maximum number of residential units on the property shall be 8 units per acre on the previous (SPUD) Small Planned Unit Development.

Motion made to request to delete phrase (6h) in the (SPUD) Small Planned Unit Development.

COMMISSIONER Carter made a MOTION to APPROVE deletion of (6h) in the (SPUD) SMALL PLANNED UNIT DEVELOPMENT for case# SPUD-20-292 COMMISSIONER Sanders SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6-0.

Fred Morrison, City Attorney stated the motion was to delete (6h) need to approve the entire case with the change made.

Commissioner Haliday made a MOTION for APPROVAL of case # SPUD-20-292 – LEE STREET VILLAGE – SMALL PLANNED UNIT DEVELOPMENT REZONING with the modifications of removing the clause previously stated Commissioner Sanders SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

DISCUSSION

None.

ANNOUNCEMENTS

Motion made to adjourn meeting by Commissioner Marshall and seconded by Commissioner Carter.

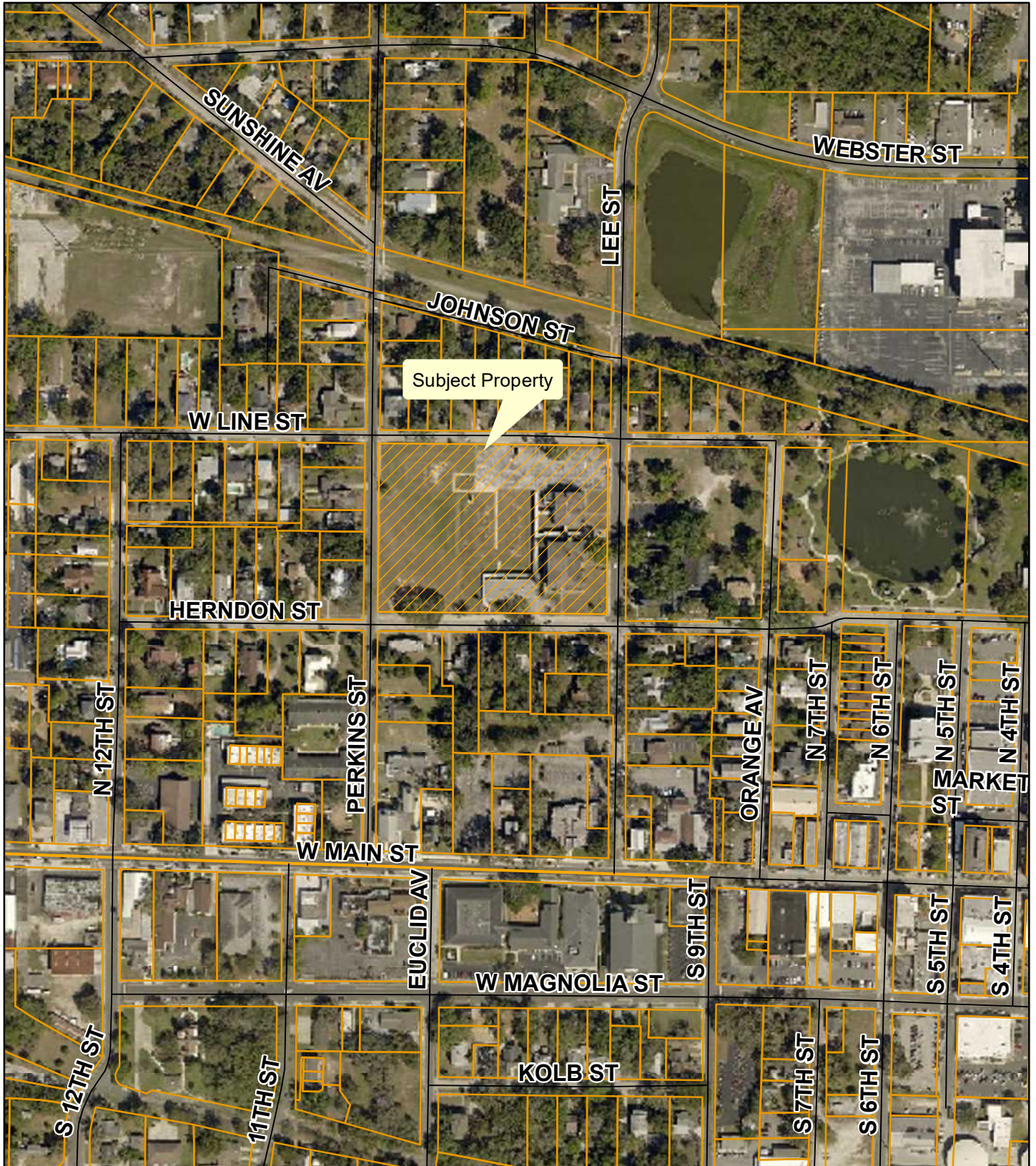
ADJOURNMENT

Approximately 5:35 p.m.

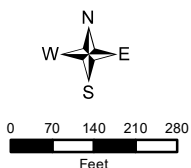
Tim Sennett, Vice-Chairman

Sabrina Mitchell, Administrative Assistant II

Aerial

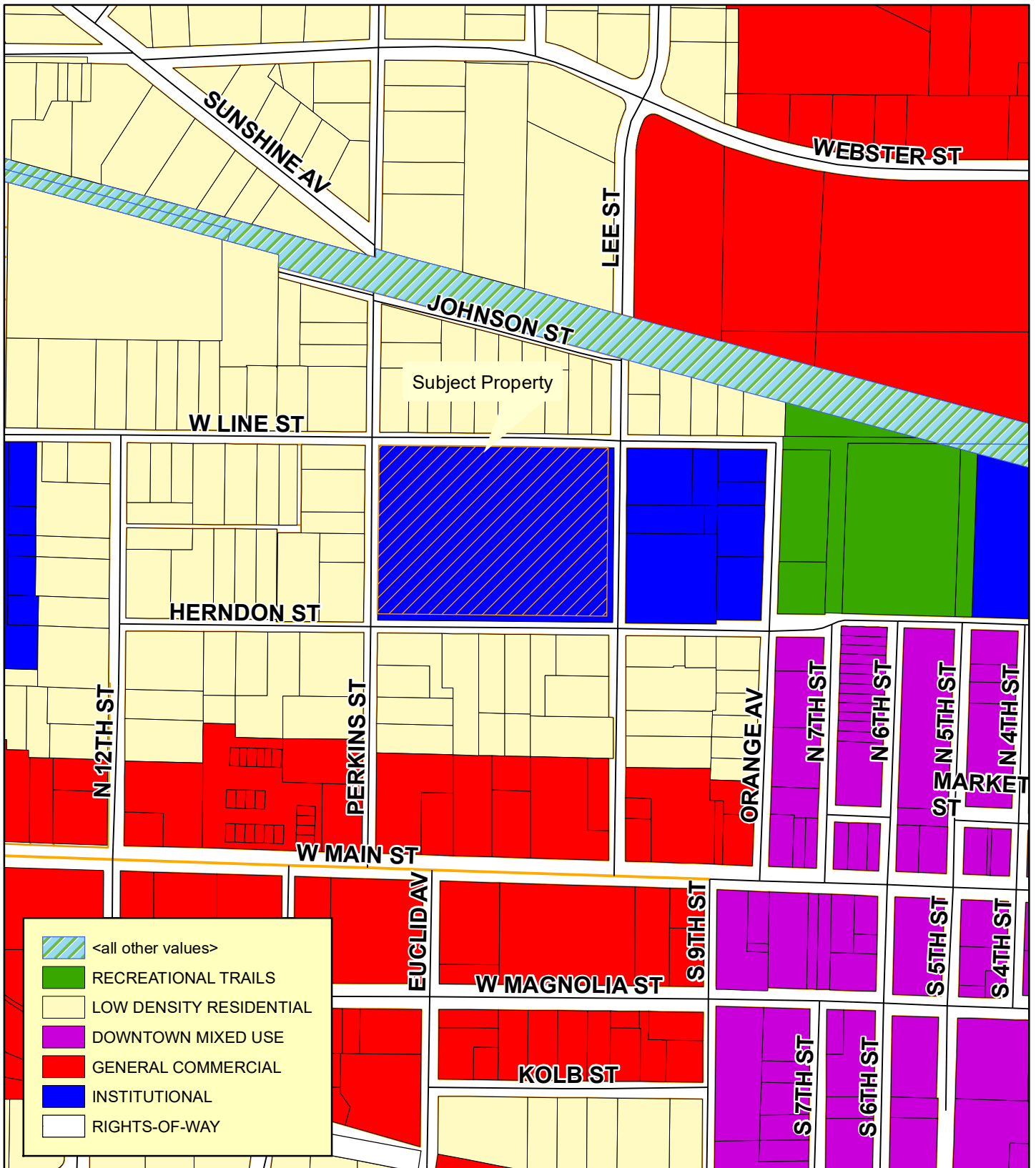


**Planning
& Zoning
Division**

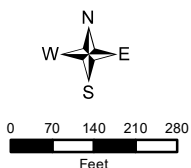


SSCP-20-291 Lee Street Village
Alternate Key #: 1263671
Address: 207 Lee Street
Section 26, Township 19 South, Range 24 East
December 3, 2020

Future Land Use

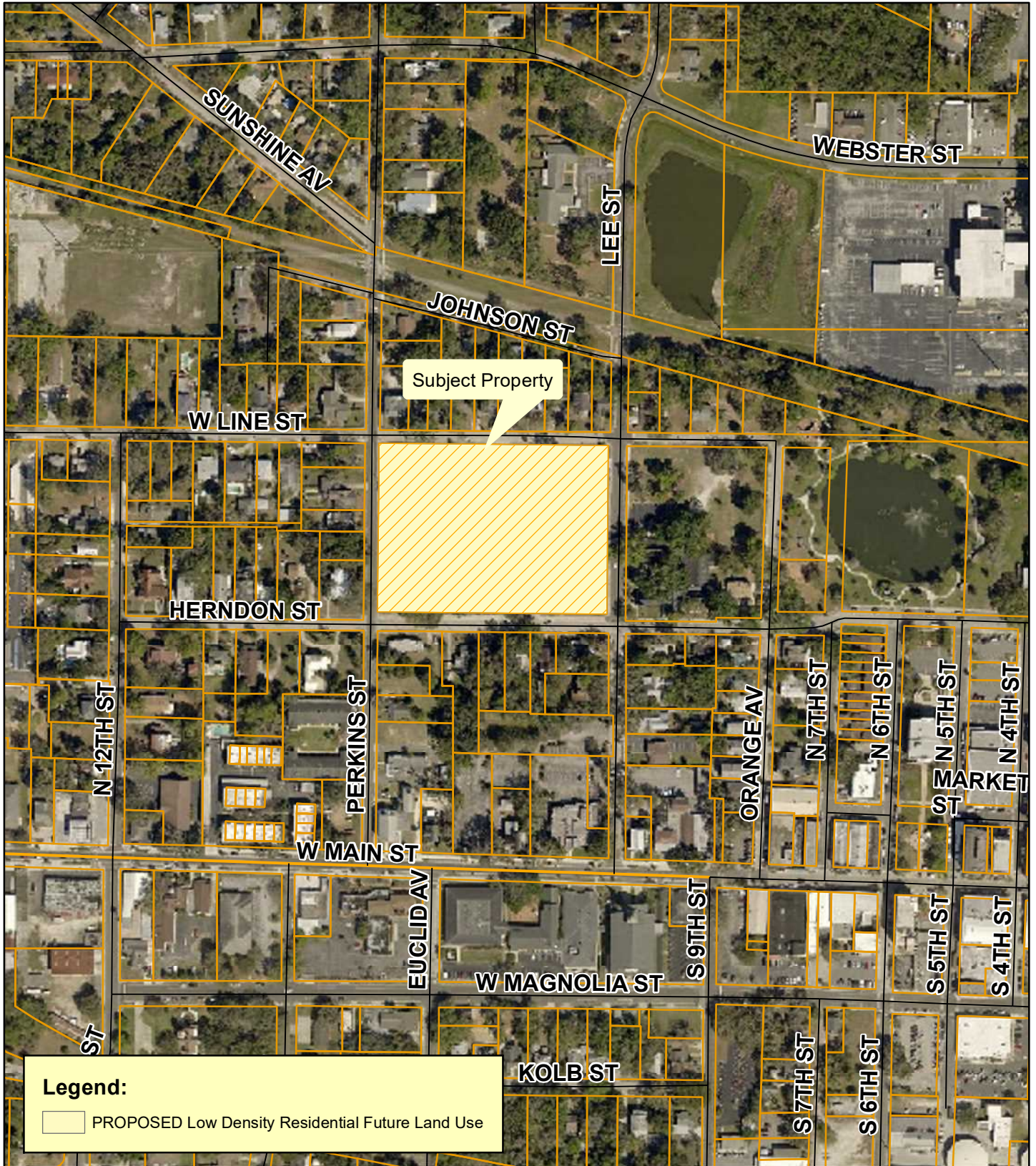


**Planning
& Zoning
Division**

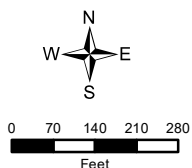


SSCP-20-291 Lee Street Village
 Alternate Key #: 1263671
 Address: 207 Lee Street
 Section 26, Township 19 South, Range 24 East
 December 3, 2020

PROPOSED Future Land Use



**Planning
& Zoning
Division**

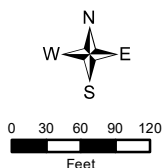


SSCP-20-291 Lee Street Village
Alternate Key #: 1263671
Address: 207 Lee Street
Section 26, Township 19 South, Range 24 East
December 3, 2020

Surrounding Existing Land Uses



**Planning
& Zoning
Division**



SSCP-20-291 Lee Street Village

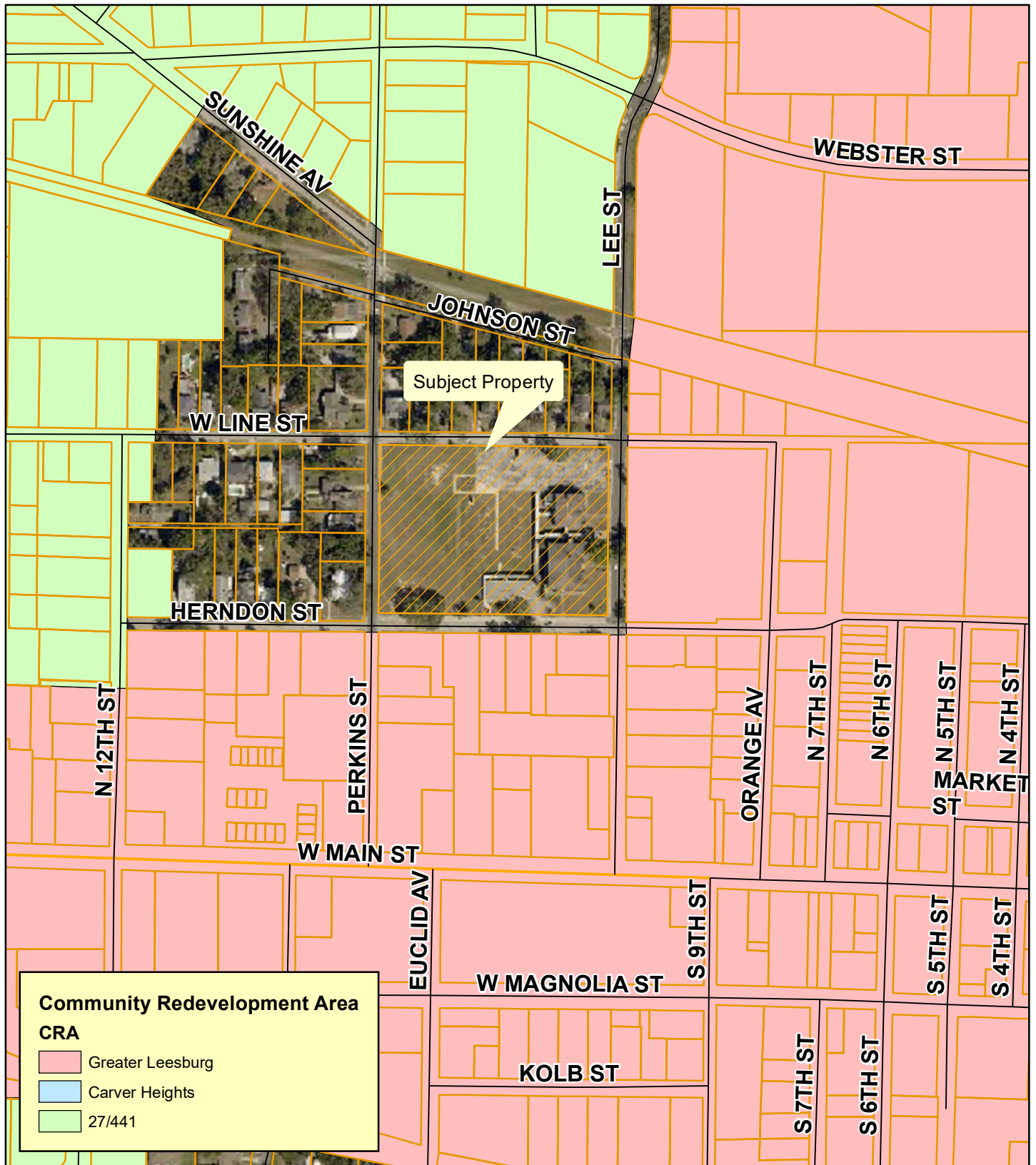
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Address: 207 Lee Street

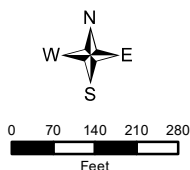
Section 26, Township 19 South, Range 24 East

December 3, 2020

Community Redevelopment Area



**Planning
& Zoning
Division**



SSCP-20-291 Lee Street Village

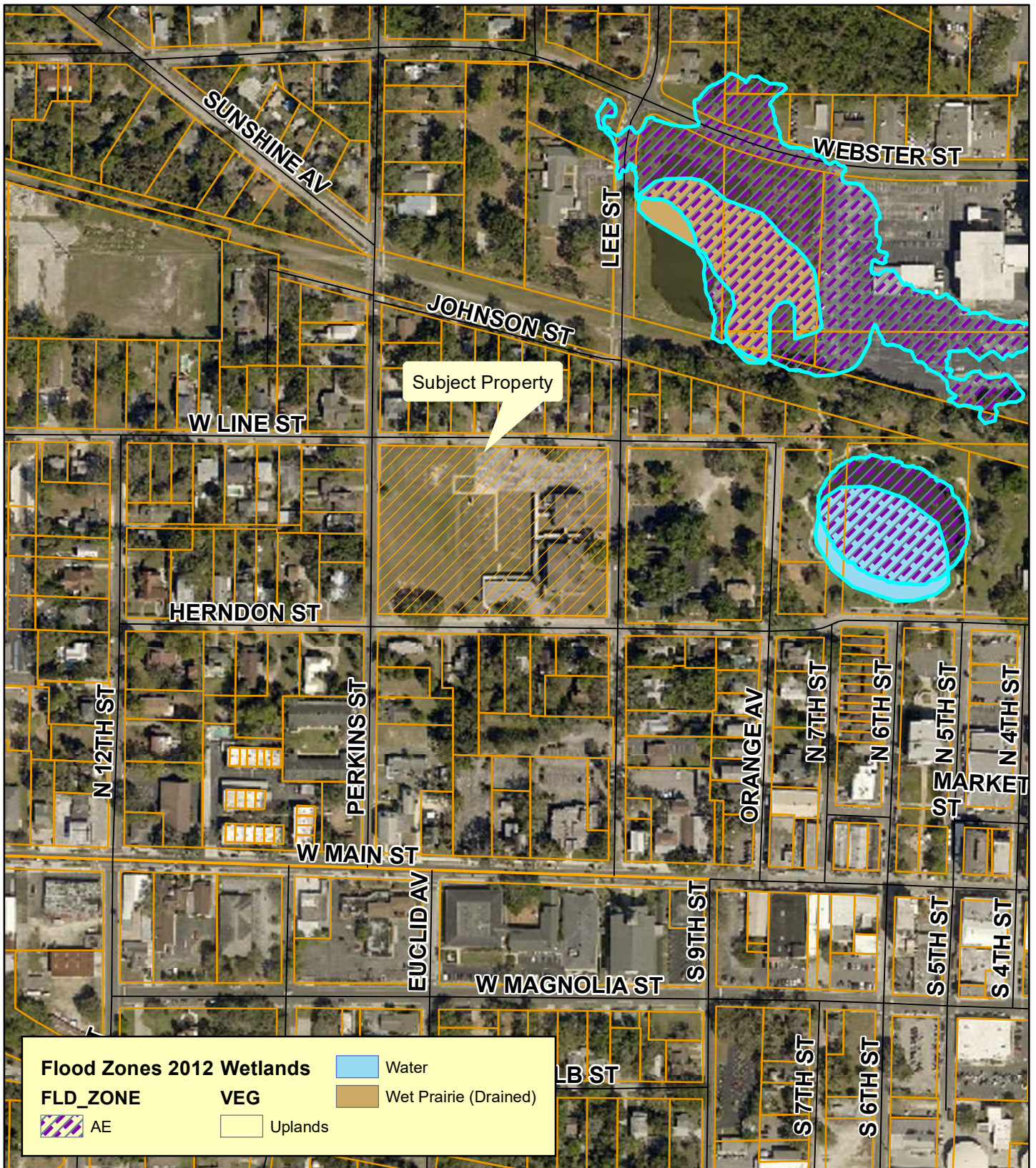
Alternate Key #: 1263671

Address: 207 Lee Street

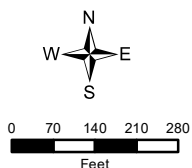
Section 26, Township 19 South, Range 24 East

December 3, 2020

Wetlands and Flood Zones



**Planning
& Zoning
Division**



SSCP-20-291 Lee Street Village
 Alternate Key #: 1263671
 Address: 207 Lee Street
 Section 26, Township 19 South, Range 24 East
 December 3, 2020

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.A.3.

Meeting Date: May 24, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance of the City of Leesburg, Florida, amending the development conditions on a SPUD (Small Planned Unit Development) zoning on approximately 4.87 acres, to allow for residential development for a property generally located west of Lee Street, south of West Line Street, and east of Perkins Street, as legally described in Section 26, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date. (Lee Street Village SPUD)

Staff Recommendation:

The Planning and Zoning Staff and Planning Commission recommend approval of the request to rezone the subject property by amending the development conditions on a SPUD (Small Planned Unit Development) to allow for a mixed use residential development.

Analysis:

The project site is approximately 4.87 acres, and is generally located west of Lee Street, south of West Line Street, and East of Perkins Street, as shown on the attached maps. This is the old Lee School site. The school has been unused for several years. The proposal will allow for a mix of residential uses, including apartments in the main (south) building, with townhouse developments on the rest of the property. The existing land uses and zonings surrounding the property are residential and institutional. City of Leesburg utilities are available.

The Planning Commission held a public hearing on the application on January 21, 2021 and recommended approval by a vote of 5-0.

Procurement Analysis:

N/A

Options:

1. Approve the request to amend the development conditions of the SPUD zoning; or
2. Other such action as the Commission may deem appropriate.

Fiscal Impact:

Future development of this site will create a positive fiscal impact on the City of Leesburg, in the form of impact and utility fees, plus ad valorem taxes.

Submission Date and Time:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE DEVELOPMENT CONDITIONS ON A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ZONING ON APPROXIMATELY 4.87 ACRES, TO ALLOW FOR RESIDENTIAL DEVELOPMENT FOR A PROPERTY GENERALLY LOCATED WEST OF LEE STREET, SOUTH OF WEST LINE STREET, AND EAST OF PERKINS STREET, AS LEGALLY DESCRIBED IN SECTION 26, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. (LEE STREET VILLAGE SPUD)

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA, that:

Section 1.

Based upon the petition of Barry Mansfield, Cullison Wright Development (Greg Beliveau, Petitioner) petitioner of the property hereinafter described, which petition has heretofore been approved by the City Commission of the City of Leesburg Florida, pursuant to the provisions of the Laws of Florida, the said property located in Lake County, Florida, is hereby rezoned from SPUD (Small Planned Unit Development) to SPUD (Small Planned Unit Development), to-wit:

(Legal Description)
(See Exhibit B)

Section 2.

This ordinance shall become effective upon its passage and adoption, according to law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the 24th day of May 2021.

THE CITY OF LEESBURG, FLORIDA

Mayor

ATTEST:

City Clerk

**LEE STREET VILLAGE
SPUD (SMALL PLANNED UNIT DEVELOPMENT) REZONING
PLANNED DEVELOPMENT CONDITIONS**

January 21, 2021

These Planned Development Conditions for a PUD (Planned Unit Development) District are granted by the City of Leesburg Planning Commission, Lake County, Florida to Barry Mansfield, Cullison-Wright Development (Prospera Senior Living, LLC) "Permittee" for the purposes and terms and conditions as set forth herein pursuant to authority contained in Chapter 25 "Zoning", Section 25-278 "Planned Development Process" of the City of Leesburg Code of Ordinances, as amended.

BACKGROUND: The "Permittee" has submitted an application requesting a SPUD (Small Planned Unit Development) zoning district to allow a residential use project consisting of townhome and multi-family (apartment) living and associated uses on an approximately five (5) +/- acre site within the City of Leesburg in accordance with their Planned Development application and supplemental information. The project proposes to re-develop the original Lee School building on the southeast corner of Lee Street and Herndon Street into market rate apartments, and to and to develop the remaining property into single family attached units.

1. PERMISSION

Permission is hereby granted to Barry Mansfield, Cullison-Wright Development (Prospera Senior Living, LLC) to operate, and maintain a SPUD (Small Planned Unit Development) development in and on real property in the City of Leesburg. The property is generally located on the west side of Lee Street, south of West Line Street, east of Perkins Street and north of Herndon Street. The property is more particularly described as shown in the attached legal description below.

2. LEGAL DESCRIPTION

See attached legal Exhibit B

3. LAND USES, AREAS AND SETBACKS

The above-described property shall be used for SPUD (Small Planned Unit Development) uses as limited herein, and pursuant to City of Leesburg development codes and standards. Uses shall be those listed as permitted uses in this document and shall occupy the approximate area as shown on the Conceptual Plan.

A. The project shall contain a maximum of:

- a. 49 attached single family (townhouse) units
- b. 14 apartment units within the Lee School Building
- c. Maximum number of units shall not exceed. 63

B. Primary Uses

- 1) Permitted Uses shall be as follows:
 - a. single family units (R-2 (Medium Density Residential zoning standards)
 - b. townhouses
 - c. multi-family (in historic Lee School)

C. Accessory Uses

1) Accessory Uses shall be as follows

- a. community services such as senior centers and community groups
- b. educational/classroom uses
- c. museums for display of art, history and science collections etc.
- d. non-profit organizations
- e. houses of worship
- f. recreational, park and open space uses
- g. retail sales as an accessory to the primary permitted uses

E. Prohibited Uses shall be as follows:

- a. commercial uses not associated with the primary permitted uses
- b. industrial uses
- c. All uses not permitted by the PUD (Planned Unit Development)
- d. Other related uses may be included by written determination of the Planning & Zoning Manager. Such uses shall be consistent with the intent and purpose of the zoning requirements set forth in these SPUD conditions, and shall meet the parking standards as required herein. Parking availability may limit the permitted uses.

F. Setbacks

The project shall have the following minimum sizes and setbacks:

- a. Minimum lot width for townhomes:
 - i. 24 feet
- b. Setbacks The following minimum yard setback shall be maintained.
 - Front: 20 feet
 - Rear: 18 feet
 - Sides: 20 feet between buildings
 - Corner side: 15 feet
- c. Accessory: Accessory structures shall have a minimum rear and side setback of 5 feet and single accessory structures that are not attached to the principal structure shall not occupy more than 30 % of the required rear yard.
- e. Impervious surface coverage for single-family detached shall not exceed 65 percent.
- f. Maximum building height shall not exceed 25 feet or two stories
- g. Final lot sizes and widths shall be determined at development review, and shall be substantially consistent with the attached Conceptual site plan.

D. Area

The Impervious surface coverage for this site shall not exceed seventy-five (75) percent of the gross site area.

E. Open Space

A minimum of twenty-five (25) percent of the site shall be developed as open space, including retention areas, buffer and landscaped areas. Parking areas and vehicle access areas shall not be considered in calculating open space.

4. SITE ACCESS

- A. Access to the property is currently from Lee Street on the east and West Line Street on the north. Any additional access shall be subject to the City of Leesburg PUD amendment and site plan application review process, including permitting and or review as required by Lake Sumter MPO, FDOT, Lake County and the City of Leesburg.

5. HISTORIC DISTRICT AND DESIGN REQUIREMENTS

- A. The existing structures are of significant historic value to the community, thus the original Lee School building on the southeast corner shall remain on the site.
- 1) All construction taking place on the site shall maintain the general historic character of the area, and be constructed in harmony with the Leesburg Historic District requirements of Chapter 30, City of Leesburg, Code of Ordinances.
 - 2) Prior to approval of any redevelopment of the existing Lee School plans shall be submitted and reviewed by the City of Leesburg Historic Board for consistency with Chapter 30, Historic District. All construction on the Lee school building shall at a minimum maintain, preserve or enhance the historic design, features and character of the buildings.
 - 3) Prior to approval of any new site plans or construction on the property, plans shall be submitted and reviewed by the City of Leesburg Historic Board for consistency with Chapter 30, Historic District. All new buildings and construction shall at a minimum be consistent with, maintain, preserve or enhance the historic design, features and character of the Leesburg Historic District and the historic design of the area.
 - 4) Unique design features or variations meeting the intent of this section may be approved at the discretion of the Leesburg Historic Preservation Board.

6. DEVELOPMENT STANDARDS

- A. The minimum development standards shall be those required for the C-1 (Neighborhood Commercial) district except as amended by these conditions.
- B. Variations to these requirements which meet the intent of this SPUD (Small Planned Unit Development) zoning and the Leesburg Historic District requirements may be reviewed by the Planning and Zoning Manager in consultation with the Development Review Committee and/or the Leesburg Historic Preservation Board as appropriate.

7. PARKING

- A. The permittee shall have off-street parking spaces within the property per the conceptual site plan pursuant to the City of Leesburg Code of Ordinances, as amended, which shall include the required number of handicapped parking spaces. The location and design of the proposed parking area will be reviewed during the site plan review process to provide adequate parking per City of Leesburg Code of Ordinance requirements for each use.

8. WETLANDS

- A. Should wetlands exist on the site; the following requirements shall apply. Prior to disturbance or development of any wetland area, the "Permittee" shall submit and receive

approval from all affected governmental agencies to include, but not limited to, St. John's River Water Management District and the State of Florida Department of Environmental Regulation. Any notice of violation from any affected agency shall be cause for a cease and desist order on permits issued by the City of Leesburg until such time as the violation has been resolved with the appropriate agency(s).

9. DRAINAGE AND UTILITIES

- A. Prior to receiving Final Development Plan Approval, the "Permittee" shall submit, if applicable, a Master Site Drainage Plan and Utility Implementation Plan acceptable to the City of Leesburg. Prior to removal, renovation or demolition of any existing development on the site, the permittee shall provide:
 - 1) A detailed site plan demonstrating no direct discharge of stormwater runoff generated by the development into any natural surface waters or onto adjacent properties.
 - 2) A detailed site plan indicating all provisions for electric, water, sewer, and natural gas in accordance with the site plan review process as required by the City of Leesburg Code of Ordinances.

10. TRANSPORTATION

- A. All transportation improvements shall be based on a current traffic analysis and shall be contingent upon Site Plan approval by City staff during the development review and permitting process.
- B. Vehicular access to the project site shall be provided by a minimum of two access points; one on Lee Street and one on West Line Street. Actual number, location and design of the access points shall be consistent with the site plan as determined during the Site Plan Review process.
- C. The Permittee shall provide all necessary improvements/signalization adjacent to the development as required by the Lake-Sumter MPO, FDOT, Lake County and City of Leesburg.
- D. The Permittee shall be responsible for obtaining all necessary FDOT, Lake County and City of Leesburg permits and a copy of all permits shall be provided to the City of Leesburg prior to construction plan approval.
- E. A traffic/transportation analysis, if required, shall be submitted prior to preliminary site plan approval for review and determination of any necessary access improvements. Said improvements will be the responsibility of the Permittee.

11. LANDSCAPING AND BUFFER REQUIREMENTS

- A. A minimum five foot (5) foot wide vegetative landscaped buffer shall be required along exterior boundaries of the development. The buffer shall retain existing healthy trees, shrubs and ground cover and shall include additional plantings where needed as provide in B. below.
- B. All landscaping and buffering shall be in accordance with regulations contained within

the City of Leesburg Code of Ordinances except as provided under these conditions:

- 1) For each one hundred (100) linear feet, or fraction thereof, of boundary, the following plants shall be provided in accordance with the planting standards and requirements of the Land Development Code.
 - a. Two (2) canopy trees
 - b. Two (2) ornamental trees
 - c. Thirty (30) shrubs
 - d. The remainder of the buffer area shall be landscaped with grass, groundcover, and/or other landscape treatment.
 - e. Existing vegetation in the required buffer shall be protected during construction.
 - 2) Existing vegetation in the required buffer shall be protected during any construction.
- C. Variations to the landscape requirements of the code may be approved by the Community Development Director as long as the intent of the PUD and the Landscaping Code are maintained.

12. MAINTENANCE

- A. With the exception of public utilities, maintenance of all site improvements, including but not limited to drives, internal sidewalks, landscaping and drainage shall be the responsibility of the owner.

13. DEVELOPMENT PHASING

- A. The proposed project may be constructed in phases in accordance with these Small Planned Unit Development Conditions and Conceptual Plan. Changes to the Development Plan, other than those conditions described in this agreement, shall be revised in accordance with the Planned Development review process.

14. MISCELLANEOUS CONDITIONS

- A. The uses of the proposed project shall only be those uses identified in the approved Planned Development Conditions. Any other proposed use must be specifically authorized in accordance with the Planned Development amendment process.
- B. No person, firm or corporation shall erect, construct, enlarge, alter, repair, remove, improve, move, convert, or demolish any building structure, or alter the land in any manner without first submitting the necessary plans and obtaining appropriate approvals in accordance with the City of Leesburg Codes.
- C. Construction and operation of the proposed use(s) shall at all times comply with City and other governmental agencies rules and regulations.
- D. The transfer of ownership or lease of any or all of the property described in this PUD Agreement shall include in the transfer or lease agreement, a provision that the purchaser or lessee is made good and aware of the conditions pertaining to the Planned Unit Development established and agrees to be bound by these conditions. The purchaser or lessee may request a change from the existing plans and conditions by following the procedures as described in the City of Leesburg Land Development Code, as amended.

- E. These PUD Conditions shall inure to the benefit of, and shall constitute a covenant running with the land and the terms, conditions, and provisions hereof, and shall be binding upon the present owner and any successor, and shall be subject to each and every condition herein set out.

15. LEVELS OF SERVICE

As submitted, the proposed zoning change does not appear to result in demands on public facilities which would exceed the current capacity of some public facilities, such as, but not limited to roads, sewage, water supply, drainage, solid waste, parks and recreation, schools and emergency medical facilities. However, no final development order (site plan and building permits) shall be granted for a proposed development until there is a finding that all public facilities and services required for the development have sufficient capacity at or above the adopted level of service (LOS) to accommodate the impacts of the development, or that improvements necessary to bring facilities up to their adopted LOS will be in place concurrent with the impacts of the development.

A. Utilities

1) Projected Capacities

- a. The City's utility planning efforts draw upon phasing, capacity and service requirements, based upon information provided by the applicant. The City develops its plans consistent with sound engineering principles, prudent fiscal practices and due regard for regulatory compliance.
- b. If development on this site is cause for off-site improvements for water and wastewater, the developer will bear the cost of design, permitting and construction of any such improvements. The developer shall receive no impact fee credits for any such required off-site improvements. The developer and the City may enter into a pioneering agreement with the developer, if appropriate.

B. Commitment of Capacity

There are no previous commitments of any existing or planned excess capacity.

C. Ability to Provide Services

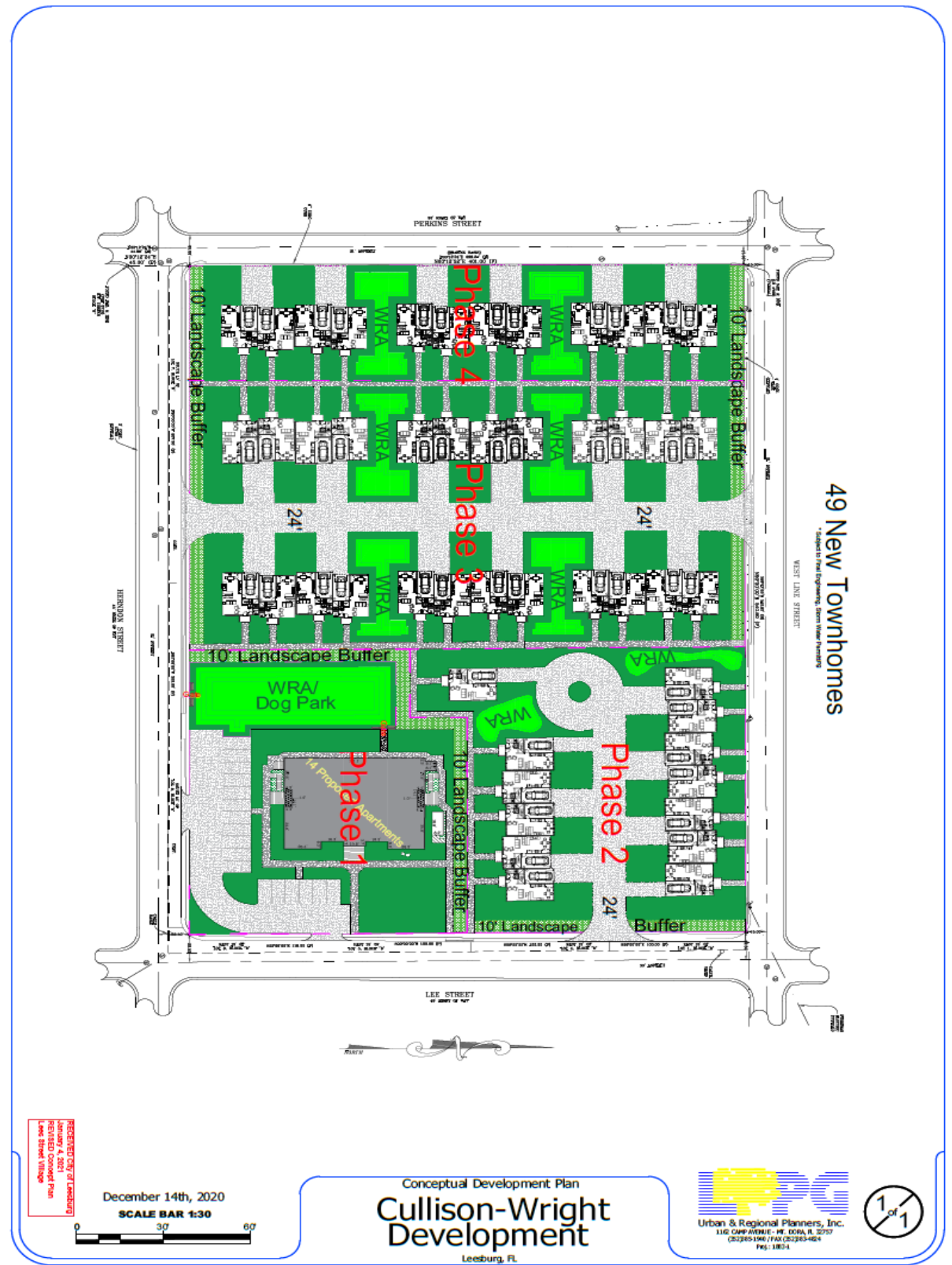
- 1) The City intends to provide water, wastewater and reclaimed water services within its service area for the foreseeable future.

LEGAL DESCRIPTION

EXHIBIT B

All of Block 6, CITY OF LEESBURG, according to the map or plat thereof as recorded in Plat Book 2, Page 19, Public Records of Lake County, Florida, LESS the South 15 feet of Lots 7 and 8, and the East 15 feet of Lots 1, 4, 5 and 8, all in Block 6, CITY OF LEESBURG, conveyed to the City of Leesburg as street right of way.

Parcel Identification Number: 2619243900-006-00000



TYPICAL ARCHITECTURAL SAMPLES

EXHIBIT D







DRAFT SUMMARY MINUTES OF THE REGULAR MEETING
OF THE PLANNING COMMISSION
VENETIAN CENTER
THURSDAY, JANUARY 21ST, 2020 - 4:30 P.M.

The Planning Commission of the City of Leesburg held its regular meeting Thursday, January 21st, 2021, at Venetian Center.

Chairman Ted Bowersox called the meeting to order at 4:30 p.m.

The following Commission members were present:

Tim Sennett – Vice-Chairman
Frazier Marshall
Michael Fitzpatrick
Alfred Haliday
Nathaniel Sanders
Ze'Shieca Carter

The following Commission members were absent:

Ted Bowersox
John O'Kelley
Chris Wood

City staff in attendance included Dan Miller, Planning & Zoning Manager, Dianne Pacewicz, Planner, Kandi Harper, Senior Planner, Sabrina Mitchell, Administrative Assistant II, and City Attorney Fred Morrison was also present.

The meeting opened with an invocation given by Vice-Chairman Sennett, followed by the Pledge of Allegiance to the Flag.

Dan Miller informed the audience of the rules of participation and the need to sign the speaker's registry. He also informed Commissioners and the audience that the City Commission meeting dates are tentatively scheduled.

Vice-Chairman Sennett called for the sixth case under new business be brought forward.

1. PUBLIC HEARING CASE # SSCP-20-291 – LEE STREET VILLAGE – SMALL SCALE COMPREHENSIVE PLAN AMENDMENT

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF LEESBURG, CHANGING THE FUTURE LAND USE DESIGNATION OF CERTAIN PROPERTY CONTAINING APPROXIMATELY 4.87 ACRES FROM INSTITUTIONAL TO LOW DENSITY RESIDENTIAL FOR A PROPERTY GENERALLY LOCATED NORTH OF WEST MAIN STREET, WEST OF LEE STREET, SOUTH OF WEST LINE STREET AND EAST OF PERKINS STREET AS LEGALLY DESCRIBED IN SECTION 26, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Mr. Miller stated the projects come in pairs, the final two projects are related.

Dan Miller introduced case number #SSCP-20-291 – Lee Street Village – Small Scale Comprehensive Plan Amendment and case number #SPUD-20-292 – Lee Street Village – Small Planned Unit Development Rezoning into the record and entered the exhibits into the record with maps and photo exhibits including aerial, zoning, future and surrounding land use, wetlands/flood zone maps, CRA maps, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the subject property, location current zoning, requests,

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Mr. Miller read the Staff Recommendations for both cases into the record; Staff recommended approval for both cases.

Vice-Chairman Sennett stated if any questions from Staff.

Greg Beliveau of LPG in Mt. Dora gave a brief presentation of the subject property, went through process of proposed LDR's; Historic Board; reviewed plans; approved, Staff reviewed, Staff; went through Southern building of Lee School; Phase 1; add 14 apartments, northern structure removed; construction of townhomes, Phase 1 & 2; renovation of Historic structure; Phase 1, interior walls; very thick; Historic classrooms; one apartment unit, 2 floors; apartments, basement; recreation areas, break rooms, Wi-Fi, outside retain look; windows replaced; modern look, elevators; removed, interior; renovated, wood floors; good shape, wood raptors, make sure meet code, Phase 2; access, driveways, parking; onsite recreational components, minimal parking; adjacent street, connectivity; proximity property; downtown, increase densities, downtown master plan; more opportunity,

Villages; moving multi-family; downtown, mixed uses; encourage downtown growth, and look forward for your recommendations for approval, and people looking at units; no pre-sale allowed, and conceptual plan.

Commissioners and Mr. Miller discussed individually owned, elevations; outside owner's ready to move on this project; assisted living, same owners, not impressed with the outside, price range, Phase 1 individually owned, and parking spaces per unit.

Greg Beliveau gave a presentation to address comments from Commissioners regarding proposed development, townhouses; individually owned; intent, elevations same, architect working on elevations; tuned to Lee School, owner's time table; last year, behind schedule; move now, Phase 1 done; ASAP, walk through; Bldg. Dept, submit Bldg. Dept; during process, gentlemen wants to move now, don't know price range; market rate; not over 200K to 230K; townhomes; or lower, Phase 1; apartments; all rentals, each unit; garage/driveway; two parking spaces, floor plan; garage; first floor and two floors above.

Mr. Miller went over the elevations in the (PUD); trying to show range. Dan Miller stated different ownership, previous owner sold to the gentlemen making application, different ownership; last year; trip to headquarters; seen results; done, and this is the best one we had in a long time.

Vice-Chairman Sennett stated any questions from the public, and then closed the discussion from the public.

Vice-Chairman Sennett entertained a motion, and then the voting took place.

Commissioner Fitzpatrick made a MOTION for APPROVAL of case # SSCP-20-291 – LEE STREET VILLAGE – SMALL SCALE COMPREHENSIVE PLAN AMENDMENT Commissioner Carter SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

Vice-Chairman Sennett called for the seventh case under new business be brought forward.

2. PUBLIC HEARING CASE # SPUD-20-292 – LEE STREET VILLAGE – SMALL PLANNED UNIT DEVELOPMENT REZONING

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE DEVELOPMENT CONDITIONS ON A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ZONING ON APPROXIMATELY 4.87 ACRES TO ALLOW FOR RESIDENTIAL DEVELOPMENT FOR A PROPERTY GENERALLY LOCATED NORTH OF WEST MAIN STREET, WEST OF LEE STREET, SOUTH OF WEST LINE STREET AND EAST OF PERKINS STREET AS LEGALLY DESCRIBED IN SECTION 26, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Dan Miller read into the record a request on page three under development standards to delete phrase (6h); maximum number of residential units on the property shall be 8 units per acre on the previous (SPUD) Small Planned Unit Development.

Motion made to request to delete phrase (6h) in the (SPUD) Small Planned Unit Development.

COMMISSIONER Carter made a MOTION to APPROVE deletion of (6h) in the (SPUD) SMALL PLANNED UNIT DEVELOPMENT for case# SPUD-20-292 COMMISSIONER Sanders SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6-0.

Fred Morrison, City Attorney stated the motion was to delete (6h) need to approve the entire case with the change made.

Commissioner Haliday made a MOTION for APPROVAL of case # SPUD-20-292 – LEE STREET VILLAGE – SMALL PLANNED UNIT DEVELOPMENT REZONING with the modifications of removing the clause previously stated Commissioner Sanders SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

DISCUSSION

None.

ANNOUNCEMENTS

Motion made to adjourn meeting by Commissioner Marshall and seconded by Commissioner Carter.

ADJOURNMENT

Approximately 5:35 p.m.

Tim Sennett, Vice-Chairman

Sabrina Mitchell, Administrative Assistant II



**CITY OF LEESBURG PLANNING & ZONING DIVISION
RECOMMENDATIONS**

DATE: January 21, 2021
OWNER: Prospera Senior Living, LLC
PETITIONER: Greg Beliveau, LPG URP
PROJECT: Lee School Mixed Use Development
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: SPUD-20-292

THE PLANNING & ZONING DIVISION RECOMMENDS:

APPROVAL of the request for the following reason(s):

1. The proposed zoning designation of SPUD (Small Planned Unit Development) is compatible with surrounding adjacent property having zoning of R-1 (Low Density Residential) and R-2 (Medium Density Residential).
2. The proposed Future Land Use designation of Low Density Residential is compatible with the surrounding adjacent properties having Future Land Use designations of Low Density Residential and Institutional.
3. The proposed request is consistent with the City's Growth Management Plan, Future Land Use Element, Goal 1, Objective 1.6.

Action Requested:

1. Vote to approve the recommendation to rezone the subject property from City of Leesburg SPUD (Small Planned Unit Development) to City of Leesburg (Small Planned Unit Development) and forward to the City Commission for consideration..

**CITY OF LEESBURG PLANNING & ZONING DIVISION
STAFF SUMMARY**

DATE: January 21, 2021
OWNER: Prospera Senior Living, LLC
PETITIONER: Greg Beliveau, LPG URP
PROJECT: Lee School Mixed Use Development
REQUEST: Small Planned Unit Development
CASE NO.: SSCP-20-291/SPUD-20-292

GENERAL LOCATION:

The property is generally located north of West Main Street, west of Lee Street, south of West Line Street and east of Perkins Street.

FUTURE LAND USE DESIGNATION:

Low Density Residential

SURROUNDING FUTURE LAND USE DESIGNATION:

North – Low Density Residential
South – Low Density Residential
East – Low Density Residential
West – Low Density Residential

PROPOSED FUTURE LAND USE DESIGNATION: Low Density Residential

EXISTING ZONING DESIGNATION: SPUD (Small Planned Unit Development)

SURROUNDING ZONING DESIGNATIONS:

North – R-2 (Medium Density Residential)
South – R-2 (Medium Density Residential)
East – R-2 (Medium Density Residential)
West – R-1 (Low Density Residential)

PROPOSED ZONING DESIGNATION:

SPUD (Small Planned Unit Development)

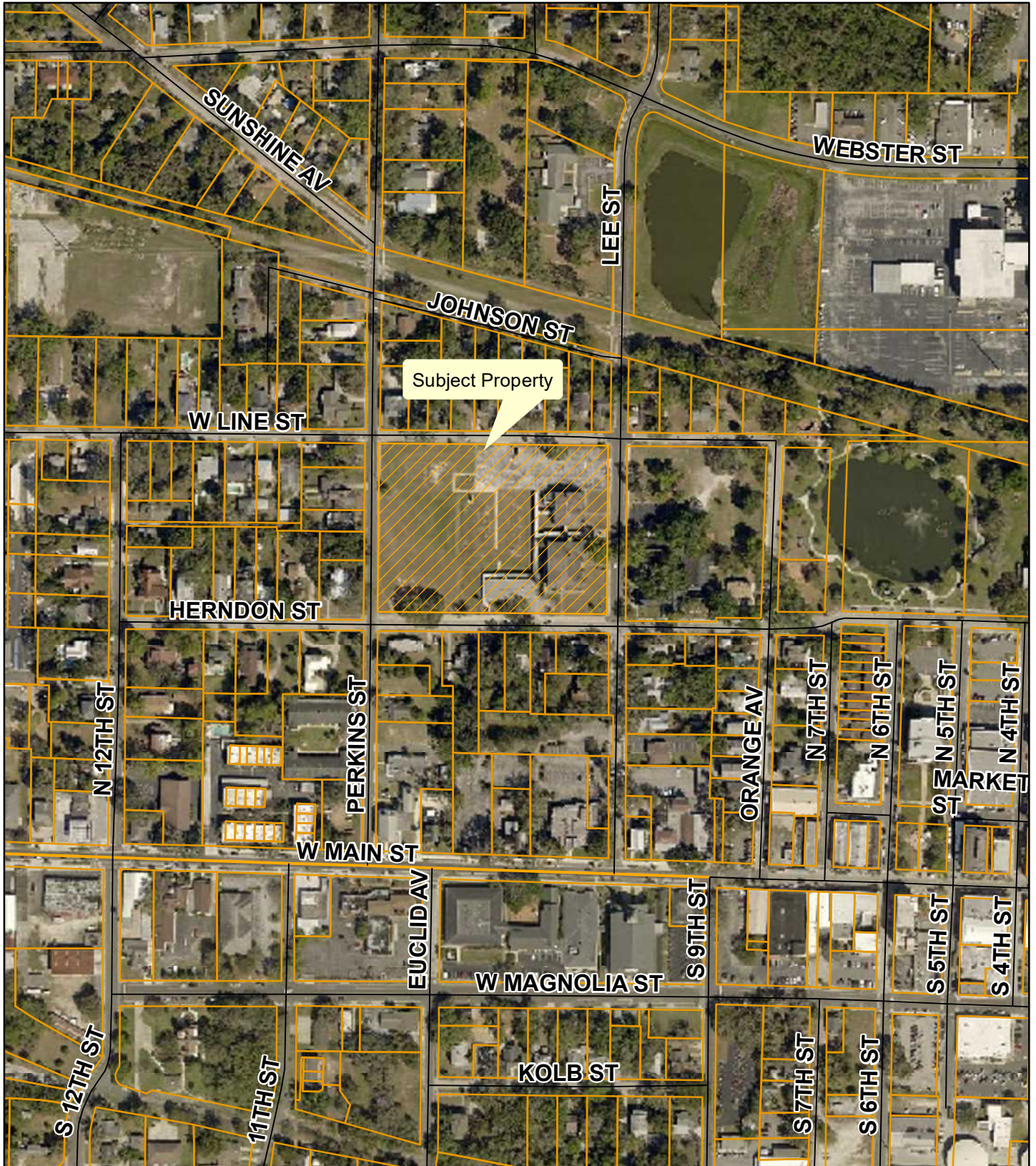
EXISTING LAND USE: Former Lee School, vacant buildings

SURROUNDING LAND USE:

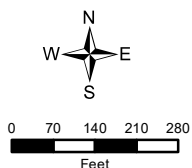
North – Single Family Residential; Multi-Family Residential
South – Single Family Residential; Multi-Family Residential
East – Institutional
West – Single Family Residential

PROPOSED LAND USE: Mixed use residential development

Aerial

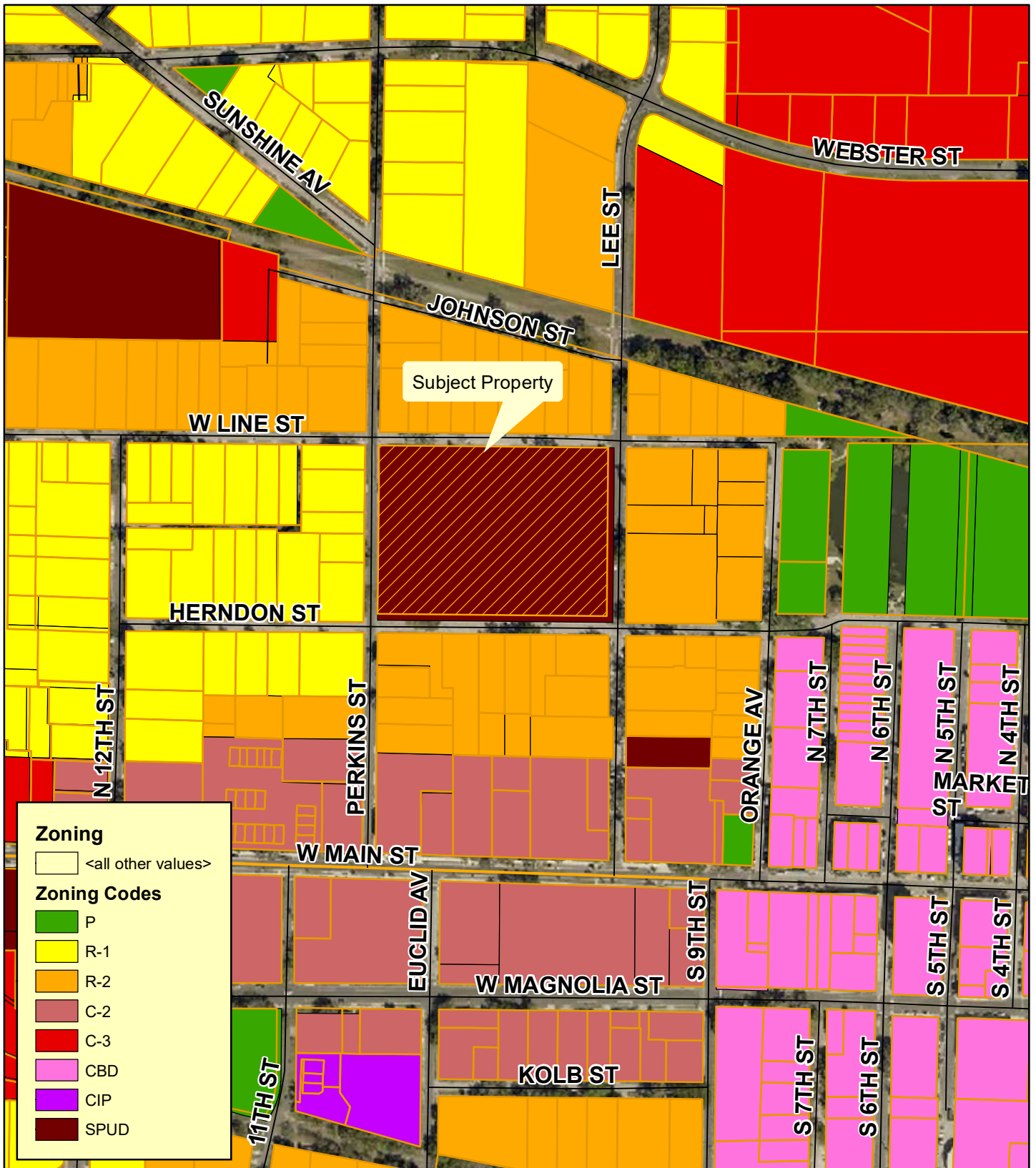


**Planning
& Zoning
Division**

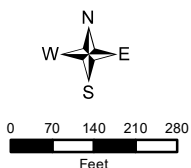


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Zoning

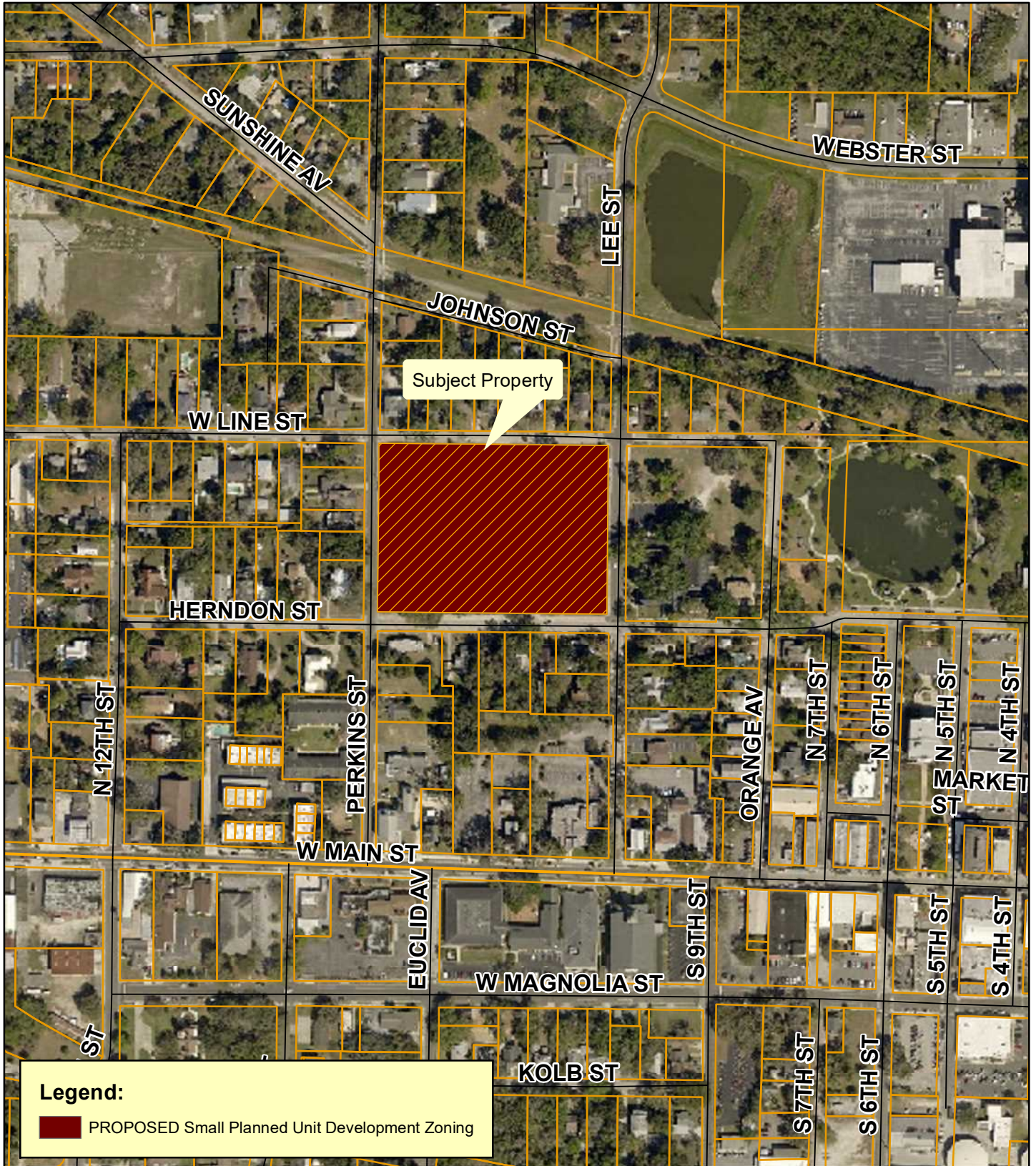


**Planning
& Zoning
Division**

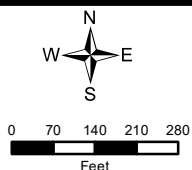


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PROPOSED Zoning

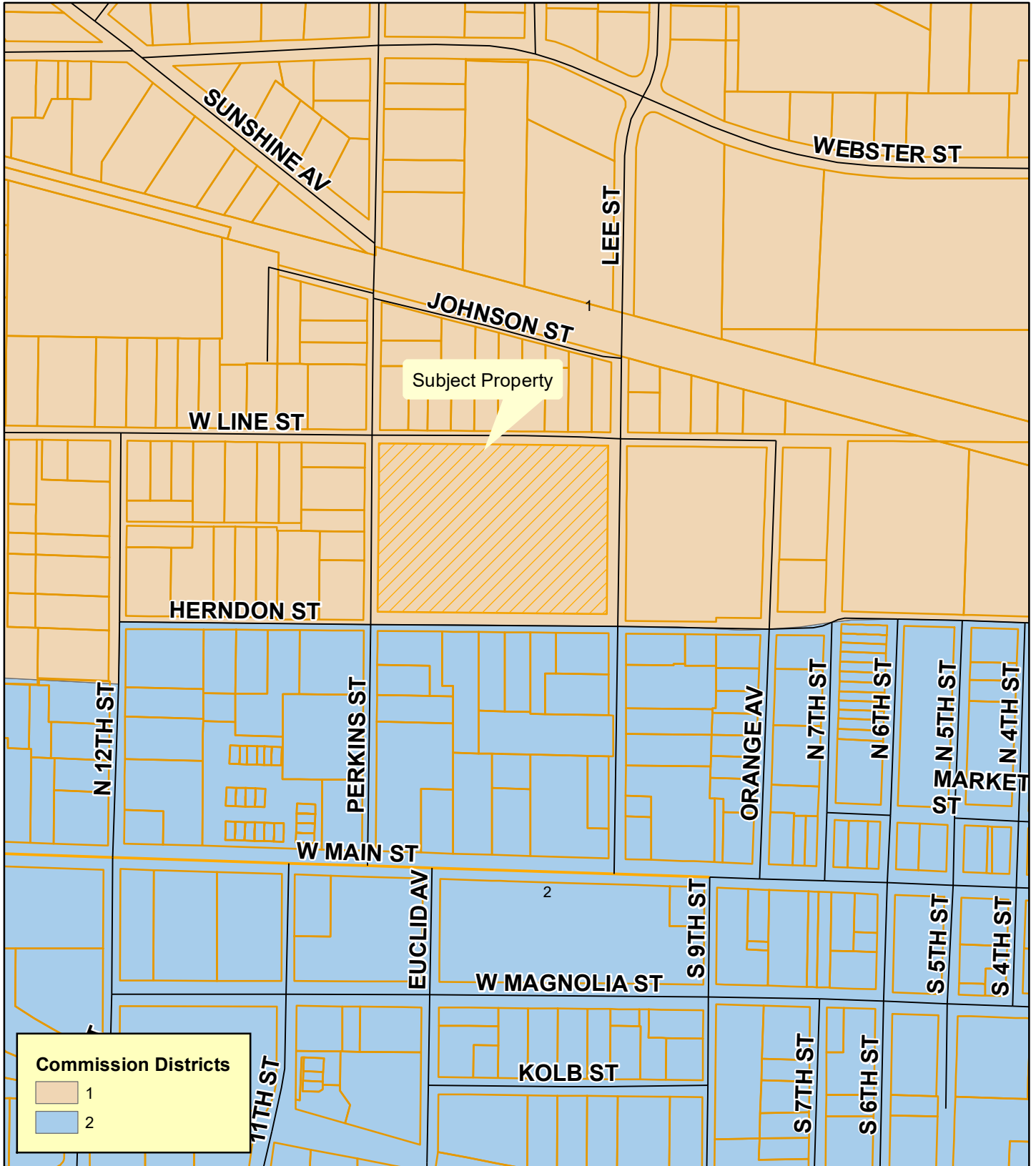


**Planning
& Zoning
Division**

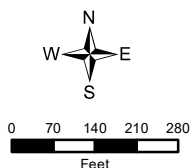


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Commission District



**Planning
& Zoning
Division**



SPUD-20-292 Lee Street Village

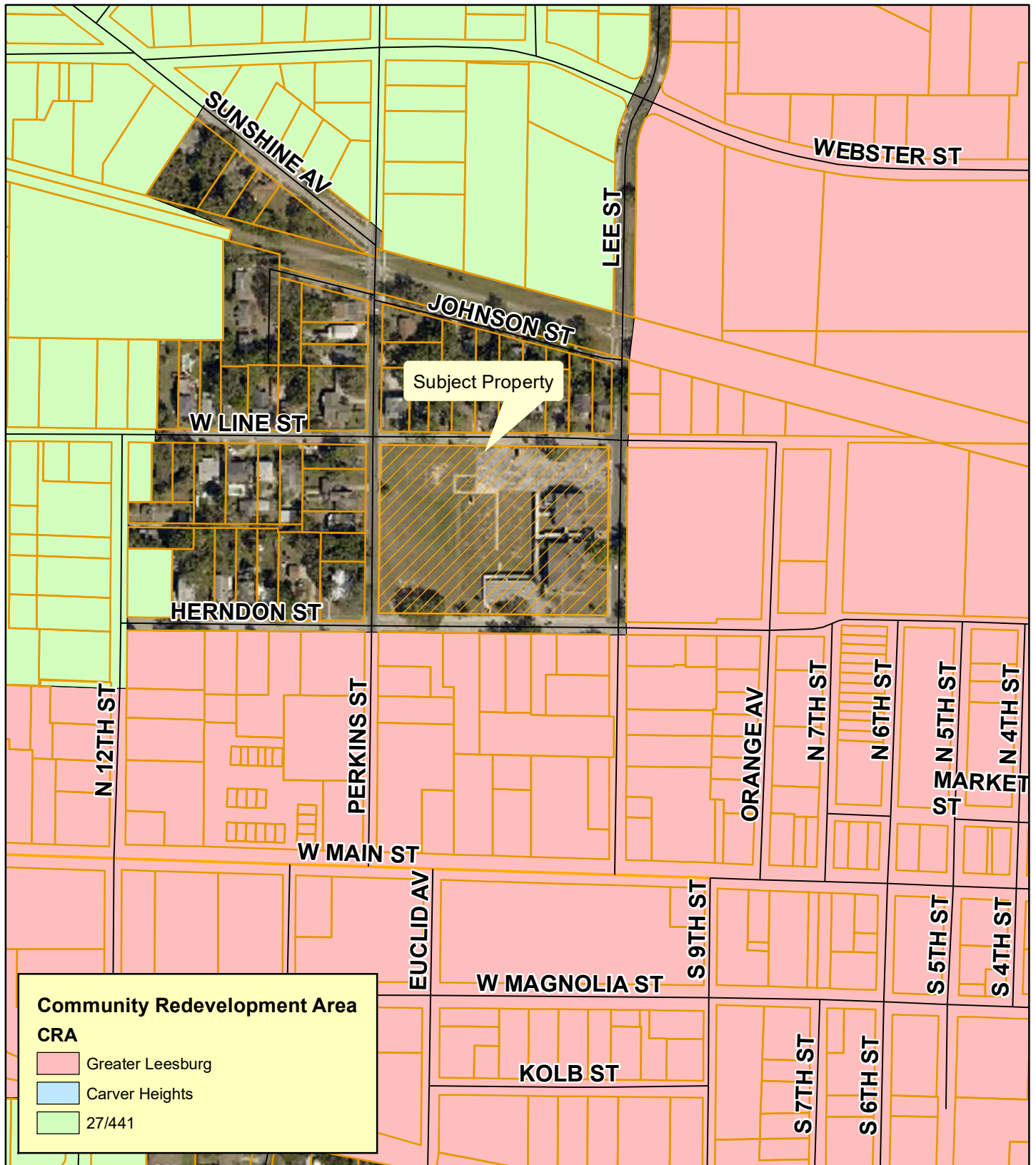
Alternate Key #: 1263671

Address: 207 Lee Street

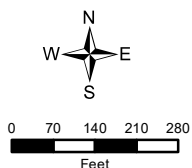
Section 26, Township 19 South, Range 24 East

December 3, 2020

Community Redevelopment Area



**Planning
& Zoning
Division**



SPUD-20-292 Lee Street Village

Alternate Key #: 1263671

Address: 207 Lee Street

Section 26, Township 19 South, Range 24 East

December 3, 2020



Public Notice sign posting looking east on subject property.



Public Notice sign posting close-up on subject property.



Looking south along Perkins Street from subject property.



Looking west across Perkins Street from subject property.



Looking north along Perkins Street from subject property.



Public Notice sign posting on subject property along Herndon Street.



Public Notice sign posting on subject property close-up along Herndon Street.



Looking west along Herndon Street from sign posting.



Looking south across Herndon Street from sign posting.



Looking east along Herndon Street from sign posting.



Public Notice sign posting on Lee Street.



Close-up of Public Notice sign posting on Lee Street.



Looking north along Lee Street from sign posting.



Looking south along Lee Street from sign posting.



Looking east across Lee Street from sign posting.



Public Notice sign posting on West Line Street.



Close-up of Public Notice Sign posting on West Line Street



Looking west along West Line Street from Public Notice Sign posting.



Looking north across West Line Street from Public Notice Sign posting.



Looking east along West Line Street from Public Notice Sign posting.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.A.4.

Meeting Date: May 24, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance of the City of Leesburg, Florida, amending the City of Leesburg Comprehensive Plan to establish criteria for a Historic District Density Bonus, based on certain criteria, establishing appropriate policies to ensure compatibility, providing for conflict with other ordinances, providing a savings clause; and providing an effective date.
(CPTA Historic District Density Bonus)

Staff Recommendation:

Staff recommends approval of the request to amend the Future Land Use Element of the Comprehensive Plan to include language for a "Historic District Density Bonus Program".

Analysis:

In an effort to create economic incentives and additional development opportunities, a new land development code section has been submitted to the Commission with the intent of allowing, under specified conditions, additional density/intensity in the City of Leesburg Historic District. Along with this code section, Staff is requesting language to amend the Future Land Use Element of the Comprehensive Plan to create a new Policy to address this opportunity. As shown on the attached map, the district covers downtown Leesburg and the surrounding area. This ordinance will allow locations which are at least one acre to increase the overall density or intensity of a proposed development, as long as the proposal supports the downtown area and local historic regulations. Approval of this amendment will allow an opportunity to increase the allowable density, under qualifying conditions, within the Historic District.

The proposed request will help ensure appropriate land use compatibility while encouraging new economic development within the Historic District and downtown. The requests will be reviewed on a case-by-case basis, under specified criteria in the Land Development Regulations, Chapter 25, City of Leesburg, Code of Ordinances.

On January 21, 2021, the Planning Commission recommended approval by a vote of 5-0.

Procurement Analysis:

N/A

Options:

1. Approve the proposed amendment to the Future Land Use Element of the Comprehensive Plan; or
2. Other such action as the Commission may deem appropriate.

Fiscal Impact:

No direct fiscal impact is anticipated as a result of this action.

Submission Date and Time:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE CITY OF LEESBURG COMPREHENSIVE PLAN TO ESTABLISH CRITERIA FOR A HISTORIC DISTRICT DENSITY BONUS, BASED ON CERTAIN CRITERIA, ESTABLISHING APPROPRIATE POLICIES TO ENSURE COMPATIBILITY, PROVIDING FOR CONFLICT WITH OTHER ORDINANCES, PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. (CPTA HISTORIC DISTRICT DENSITY BONUS)

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA, that:

The City of Leesburg Comprehensive Plan and Future Land Use Element shall be amended as attached and incorporated as Exhibits A and B of this Ordinance.

Section I.

Based upon the petition of Barry Mansfield, Cullison Wright Development (Greg Beliveau, Petitioner) for the area hereinafter described, which petition has heretofore been approved by the City Commission of the City of Leesburg Florida, pursuant to the provisions of the Laws of Florida, the City of Leesburg Comprehensive Plan and Future Land Use Element shall be amended as attached and incorporated as Exhibits A and B of this Ordinance, and transmitted to the Florida Department of Economic Opportunity for review.

Section II.

In the event of any conflict between this Ordinance and any other portion of the Code of Ordinances, the provisions of this Ordinance shall take precedence.

Section III.

If any portion of this Ordinance is declared invalid or unenforceable, and to the extent that it is possible to do so without destroying the overall intent and effect of this Ordinance, the portion deemed invalid or unenforceable shall be severed here from and the remainder of the ordinance shall continue in full force and effect as if it were enacted without including the portion found to be invalid or unenforceable.

Section IV.

This Ordinance shall become effective upon its passage and adoption according to law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the 24th day of May 2021.

THE CITY OF LEESBURG, FLORIDA

Mayor

ATTEST:

City Clerk

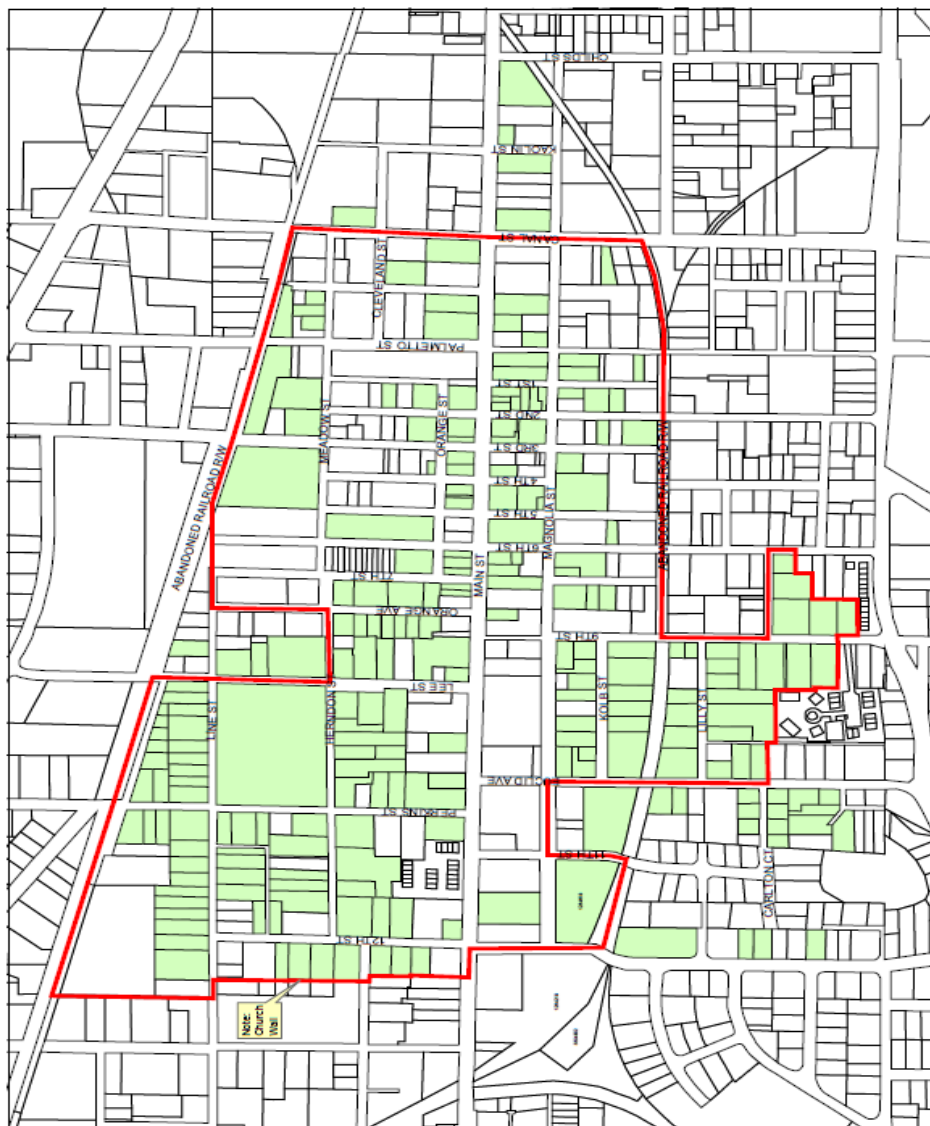
EXHIBIT A – PROPOSED COMPREHENSIVE PLAN AMENDMENT

Future Land Use Element Policy 1.1.8

Policy 1.1.8

The city shall create a “Historic District Density Bonus Program” under Chapter 25, Zoning, City of Leesburg Code of Ordinances, which shall provide an opportunity for an increase in density /intensity of proposed or existing structures, for properties to be developed or redeveloped, which is consistent with the Historic District requirements of Chapter 26, City of Leesburg, Code Ordinances.

City of Leesburg
Downtown Historic District Boundary



Legend

 Historic District

Parcels

 Historic

 Other



City of Lansing
Engineering Division
Created by J. Hume
Date May 13, 2022
Drawing Title
Sheet 1 of 1
No. Main-05-shaft road

DISCLAIMER: The data displayed on this map are based on a variety of sources. This map is not a survey and should only be used for planning purposes. The information on this map is provided in an "as is" condition. For further information, contact the City of Dallas, 200 Ross Avenue, Dallas, Texas 75201.



DRAFT SUMMARY MINUTES OF THE REGULAR MEETING
OF THE PLANNING COMMISSION
VENETIAN CENTER
THURSDAY, JANUARY 21ST, 2020 - 4:30 P.M.

The Planning Commission of the City of Leesburg held its regular meeting Thursday, January 21st, 2021, at Venetian Center.

Chairman Ted Bowersox called the meeting to order at 4:30 p.m.

The following Commission members were present:

Tim Sennett – Vice-Chairman
Frazier Marshall
Michael Fitzpatrick
Alfred Haliday
Nathaniel Sanders
Ze'Shieca Carter

The following Commission members were absent:

Ted Bowersox
John O'Kelley
Chris Wood

City staff in attendance included Dan Miller, Planning & Zoning Manager, Dianne Pacewicz, Planner, Kandi Harper, Senior Planner, Sabrina Mitchell, Administrative Assistant II, and City Attorney Fred Morrison was also present.

The meeting opened with an invocation given by Vice-Chairman Sennett, followed by the Pledge of Allegiance to the Flag.

Dan Miller informed the audience of the rules of participation and the need to sign the speaker's registry. He also informed Commissioners and the audience that the City Commission meeting dates are tentatively scheduled.

**DRAFT SUMMARY MINUTES OF THE PLANNING COMMISSION MEETING
FOR THURSDAY, DECEMBER 17TH, 2020**

Commissioner Carter moved to APPROVE the draft minutes from the DECEMBER 17TH, 2020 meeting. Commissioner Fitzpatrick SECONDED the motion, which PASSED by a vote of 6- 0.

Vice-Chairman Sennett called for the fourth case under new business be brought forward.

**1. PUBLIC HEARING CASE #CPTA-20-178 – HISTORIC
PRESERVATION DISTRICT DENSITY BONUS – COMPREHENSIVE
PLAN TEXT AMENDMENT**

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE CITY OF LEESBURG COMPREHENSIVE PLAN TO ESTABLISH CRITERIA FOR DENSITY BONUS BASED ON CERTAIN CRITERIA, ESTABLISHING APPROPRIATE POLICIES TO ENSURE COMPATIBILITY; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Mr. Miller stated we have two new cases and would like to speak about both cases together.

Dan Miller introduced case number #CPTA-20-178 – Historic Preservation District Density Bonus – Comprehensive Plan Text Amendment and case number #AMDT-20-279 – Historic Preservation District Density Bonus – Land Development Regulation Amendment Section 25 - 292 (25) into the record and entered the exhibits into the record with maps; Historic District, and photo exhibits, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the overall development, comprehensive plan text amendment; create a policy in the Future Land Use Element; allow the city to create a Density Bonus within Historic District, land development regulation; zoning code amendment; Chapter 25; create the process and procedures, Leesburg Historic District, went over Historic District area map; includes downtown Leesburg and some areas to south and west, proposing Ordinance, adopt; exhibit, proposed Comprehensive Plan Amendment Future Land Element Policy 1.1.8 and read Ordinance into the record, and went over Ordinance Section 25-292 (25), read into the record, and goes over requirements in code.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Mr. Miller read the Staff Recommendations for both cases into the record; Staff recommended approval for both cases.

Vice-Chairman Sennett stated if any questions from Staff.

Commissioners and Mr. Miller discussed clarification on page 3 of 7 item 1 (underutilized property; someone has property in that area; rental property, unable to rent for a year; no utilities, Mr. Miller replied if they could collect one full acre of land; one contiguous area, single-family home; can't do that; collect enough land; one full acre, CRA, Mr. Miller replied most of the area falls under CRA, gives one carat, Historic District zoning; started/stopped; Mr. Miller gave a brief explanation of the Historic District, and stated if the program works here it could work in other areas; good ex: Mike and Pine St; Carver area; excellent area, start here; potentially expand or creates new programs; additional areas, any area that contains a concentration of underutilized area or slum; or abandoned properties; good carat; hoping very successful, move to other areas, change amount of land needed; based on area, need somewhere to start, beneficial/biggest hurdle; assistant living. Mr. Miller stated long term ownership time period; can't take care of property anymore; supports strength of downtown; housing supporting business downtown, consider assistant living; review procedure; intense review; public/staff, encouraged good positive development; potential to expand it.

Vice-Chairman Sennett stated any questions or comments from the public, and then closed the discussion from the public.

Vice-Chairman Sennett entertained a motion, and then the voting took place.

Commissioner Haliday made a MOTION for APPROVAL of case # CPTA-20-178 – HISTORIC PRESERVATION DISTRICT DENSITY – COMPREHENSIVE PLAN TEXT AMENDMENT Commissioner Fitzpatrick SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

Vice-Chairman Sennett called for the fifth case under new business be brought forward.

2. PUBLIC HEARING CASE #AMDT-20-279 – HISTORIC PRESERVATION DISTRICT DENSITY BONUS – LAND DEVELOPMENT REGULATION AMENDMENT SECTION 25 – 292 (25)

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING CITY OF LEESBURG LAND DEVELOPMENT REGULATIONS BY ESTABLISHING CRITERIA FOR DENSITY BONUSES IN ARTICLE IV – SECTION 25-292 SUPPLEMENTAL DISTRICT REQUIREMENTS; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Vice-Chairman Sennett entertained a motion, and then the voting took place.

Commissioner Fitzpatrick made a MOTION for APPROVAL of case # AMDT-20-279 – HISTORIC PRESERVATION DISTRICT DENSITY BONUS – LAND DEVELOPMENT REGULATION AMENDMENT SECTION 25 - 292 (25) Commissioner Haliday SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

Vice-Chairman Sennett called for the sixth case under new business be brought forward.

DISCUSSION

None.

ANNOUNCEMENTS

Motion made to adjourn meeting by Commissioner Marshall and seconded by Commissioner Carter.

ADJOURNMENT

Approximately 5:35 p.m.

Tim Sennett, Vice-Chairman

Sabrina Mitchell, Administrative Assistant II



**CITY OF LEESBURG PLANNING & ZONING DIVISION
RECOMMENDATIONS**

PROJECT: Comprehensive Plan Text Amendment
REQUEST: Historic District Density Bonus Policy
CASE NO.: CPTA-20-178
MEETING DATE: January 21, 2021

THE PLANNING & ZONING DIVISION RECOMMENDS:

APPROVAL of the request

for the following reason(s):

1. The proposed request to amend the City's Comprehensive Plan Future Land Use Element as shown in *Exhibit A*, is consistent with appropriate legally mandated planning and development practices in Florida, including the adoption of appropriate land development regulations.
2. The proposed request is consistent with the Comprehensive Plan, Future Land Use Element under Objective 1.1 ***Land Use Categories and Overlays***, Policy 1.12., which states "The City shall adopt maximum densities and intensities for each land use category which encourage economic development while protecting the natural environment...).
3. The proposed request will help ensure appropriate land use compatibility while encouraging new economic development within the Historic District by allowing higher density/intensity, reviewed on a case-by-case bases, under specified criteria in the Land Development Regulations, chapter 25, City of Leesburg, Code of Ordinances.
4. The proposed request will support the Downtown Master Plan and economic activity in downtown Leesburg.

Action Requested:

1. Vote to approve proposed amendment to the City's Comprehensive Plan, Future Land Use Element together with *Exhibits A and B* attached hereto, and forward to the City Commission for consideration.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.A.5.

Meeting Date: May 24, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance of the City of Leesburg, Florida, amending the City of Leesburg Land Development Regulations by establishing criteria for density bonuses in Article IV – Section 25-292 *Supplemental District Requirements*; providing for conflict with other ordinances, providing a savings clause; and providing an effective date. (Historic District Density Bonus Chapter 25)

Staff Recommendation:

Staff recommends approval of the proposal to amend the City's Land Development Regulations to create Section 25-292(25) "Historic District Density Bonus".

Analysis:

In an effort to create economic incentives and additional development opportunities, a new code section has been created with the intent of allowing, under specified conditions, additional density/intensity in the City of Leesburg Historic District. As shown on the attached map, the district covers downtown Leesburg and the surrounding area. This ordinance will allow locations which are at least one acre to increase the overall density or intensity of a proposed development, as long as the proposal supports the downtown area and local historic regulations.

The proposed request will help ensure appropriate land use compatibility while encouraging new economic development within the Historic District and downtown. The requests will be reviewed on a case-by-case basis, under specified criteria in the Land Development Regulations, Chapter 25, City of Leesburg, Code of Ordinances.

On January 21, 2021, the Planning Commission recommended approval by a vote of 5-0.

Procurement Analysis:

N/A

Options:

1. Approve the proposal to add Section 25-292(25) "*Historic District Density Bonus*"; or
2. Other such action as the Commission may deem appropriate.

Fiscal Impact:

Approval of this ordinance will have no immediate fiscal impact. Future development of sites contemplated by this ordinance will provide increased property values and utility fees.

Submission Date and Time:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE CITY OF LEESBURG LAND DEVELOPMENT REGULATIONS BY ESTABLISHING CRITERIA FOR DENSITY BONUSES IN ARTICLE IV – SECTION 25-292 *SUPPLEMENTAL DISTRICT REQUIREMENTS*; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES, PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. (HISTORIC DISTRICT DENSITY BONUS CHAPTER 25)

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA, that:

SECTION I.

CHAPTER 25- Section 25-292 (25)

The Code of Ordinances of the City of Leesburg, Florida, Chapter 25, is hereby amended as follows:
Article IV, Section 25-292 (25) Historic District Density Bonus.

1) Short title.

This article shall be known and may be cited as "The City of Leesburg Historic District Density Bonus Program".

2) Definitions.

For the purpose of this article, the following terms shall apply:

- a) Commercial - means a property use that is for the distribution or sale of goods, or the provision of services, including all uses as defined as commercial uses by the City of Leesburg Code of Ordinances, Section 25-280 Table of Uses.
- b) Construction – means any activity produced by or incidental to the erection, demolition, assembling, altering, installing or equipping of buildings, public or private highways, roads, premises parks, utility lanes or other property, including, but not limited to, related activities such as land clearing, grading, earthmoving, excavation, blasting, filling and landscaping but not including agriculture.
- c) Demolition – means any dismantling, intentional destruction or removal of buildings or structures.
- d) Emergency Work – means work made necessary to restore property to a safe condition following a public calamity or work necessary to protect persons or property from an imminent exposure to danger.
- e) Historic District – The area shall be defined as the properties lying within the Leesburg Historic District Map as amended.
- f) Industrial - means property use that is for the fabrication, manufacturing, shipping, or production of durable or nondurable goods
- g) Motor Vehicles – includes but not limited to automobiles, trucks, buses, mopeds, minibikes and other vehicles as defined by the Florida Highway Safety and Motor Vehicles.
- h) Multi-Use means property that includes a building(s) or structure(s) which contains or is zoned for both commercial and residential uses
- i) Public right-of-way – means any street, avenue, boulevard, highway, sidewalk or alley, or

similar place normally accessible to the public used for roadway design, movement or conveyance which is owned or controlled by a governmental entity.

j) Public Space – means any real property or structures thereon that are owned, leased or controlled by a government entity.

k) Residential - means property used for residential purposes, including but not limited to, single-family residences, duplex, triplex, multi-family residences, condominiums, apartments, hotels, motels, and assisted living facilities, and as defined by the City of Leesburg Code of Ordinances, Chapter 25-284, Table of Uses.

l) Underutilized property – shall mean a property which is abandoned, has no regular utility service, and has not been continuously occupied for at least a one-year period prior to approval of a bonus prescribed herein.

m) Slum property – shall be used to describe a property which meets the criteria for underutilized property, plus has not had regular maintenance, repair for a period of at least two years.

n) Blighted property – shall indicate an ongoing need for maintenance, repair, occupation, and meets the descriptions of both underutilized and blighted property.

3) Purpose and Intent.

a) Purpose. It shall be the purpose of this chapter is to create an environment for new economic development and redevelopment within the Historic District of the City of Leesburg, Florida. This purpose shall be accomplished through the use of regulations that encourage economic activity to stimulate development and redevelopment within the established district.

b) Intent. It shall be the intent of this ordinance to provide new opportunities that allow for an increase in density or intensity of proposed new structures or, the redevelopment of existing structures, which will create a positive benefit to the overall economic health and level of construction and economic activity within the city's Historic District.

4) Eligibility of Property

a) Residential, Commercial and Multi-Use properties may be considered for inclusion in this program. Said properties shall consist of not less than one (1) acre of total land area, either single lots or combined, shall be contiguous by one or more boundary areas, and shall be located entirely within the approved Historic District as amended.

5) Criteria for Consideration

To be considered for inclusion in the City of Leesburg Historic Density Bonus program, the following criteria shall be considered by staff.

a) Projects shall be considered on an individual basis by City staff, the Historic Preservation Board and City Commission. Eligibility considerations shall include:

b) Projects shall consist of at least one acre of land, whether a single parcel or multiple parcels combined into one overall plan.

c) All land under consideration shall be located within the Leesburg Historic District map, as may be amended from time to time.

d) Projects that remove the conditions of slum, blight or underutilization properties, and/or maintain existing historic structures.

- e) Proposed development that supports goals of the Downtown Master Plan adopted by the City of Leesburg in 2020, as amended.
- f) Development plans that create new investment within the Historic District and extend benefits toward the Central Business District, such as shopping, dining, entrepreneurial activity.
- g) Proposed development plans that maintain or expand on architectural features to promote historic facades.
- h) The maximum allowable density shall be a bonus of 75% in either land use density, square footage of the project or, a one-time density adjustment to the next highest Future Land Use Category, as determined by review of staff and recommendations by the Historic Preservation Board and City Commission. At no time shall the integrity or purpose of the Historic District be negatively impacted, and all reviews and construction shall be conducted under the City of Leesburg Code of Ordinances and adopted building code.
- i) Priority consideration will be given to projects which create additional community walkability, including those near the existing or planned trail system, and those that support the City's Downtown Master Plan, as amended.

6) Review Procedures

Review of each case shall be made on a case by case basis, in the manner set forth below, with each review step performed in the same manner and procedures as a zoning case as required by the City of Leesburg, Code of Ordinances. Recommendations may be in the form an approval, denial or a recommendation that states conditions which would allow the proposal to be acceptable to the City. Prior to public hearings, staff shall negotiate in good faith for provisions to minimize any potential negative impacts and recommend to the applicant such provisions.

- a) Staff Review
 - i. A complete application shall be submitted to the Planning & Zoning staff on forms provided by the City of Leesburg, and processed under the same terms and timelines used for zoning cases reviewed by the City of Leesburg.
 - ii. Staff shall review the application and confirm that all required information is provided. Incomplete applications may be returned to the applicant for additional information.
 - iii. Staff shall then review and process the application and provide a recommendation regarding the case, and forward the recommendation to the Historic Board for consideration.
- b) Historic Board Review
 - i. The Historic Preservation Board shall consider each case and make a written recommendation to City Commission to approve, deny or approve with conditions for each application.
- c) Planning Commission Review
 - i. The Planning Commission shall review and provide comment and recommendations on cases that involve zoning, conditional use, variances. planned districts/overlays and all other cases that require review by the Planning Commission by the City of Leesburg Code of Ordinances.
 - ii. The Planning Commission shall not be required to review cases that do not involve a zoning case as noted above and required by City of Leesburg Code of Ordinances.
 - iii. These reviews shall be conducted in the same manner as provided for reviewing zoning cases under the City of Leesburg Code of Ordinances.

- d) City Commission Decision
 - i. The City Commission shall review each application and provide a final decision regarding each application in the manner, form and procedures of a zoning case as required by the City of Leesburg Code of Ordinances.

7) Chart 1: Maximum Density/Intensity

- a) Chart 1 establishes the maximum densities/intensities which may be considered under an application. Density increases shall be based on the maximum allowed by the future land use district for the property. Intensity increases shall be based on no more than the maximum allowed under the existing zoning district for the property. Each request shall be considered on a case-by-case basis.

Chart 1

	<u>Density*</u>	<u>Intensity**</u>
Residential	75%	NA
Multi-Use	50%(residl)	50% (comm)
Commercial	NA	75%

* Density increase over maximum density allowed in Future Land Use category of the property

** Intensity increase over maximum allowed by Chapter 25 Code of Ordinances

- b) For purposes of this ordinance, the final approval of one request, shall not be considered to create, form or be considered a precedent for consideration of any other case. It is the intent of this ordinance that each case shall receive a final approval or disapproval based on the specific benefits as required herein.

SECTION II.

If any portion of this ordinance is declared invalid or unenforceable, then to the extent it is possible to do so without destroying the overall intent and effect of this ordinance, the portion deemed invalid or unenforceable shall be severed here from and the remainder of this ordinance shall continue in full force and effect as if it were enacted without the portion found to be invalid or unenforceable.

SECTION III.

Conflict.

All ordinances or parts of ordinances which are in conflict with this ordinance are hereby repealed, to the extent necessary to alleviate the conflict, but shall continue in effect insofar as they are not in conflict herewith, unless repeal of the conflicting portion destroys the overall intent and effect of any of the conflicting ordinances, in which case those ordinances so affected shall be hereby repealed in their entirety.

SECTION IV.

This ordinance shall become effective upon its passage and adoption according to law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the 24th day of May 2021.

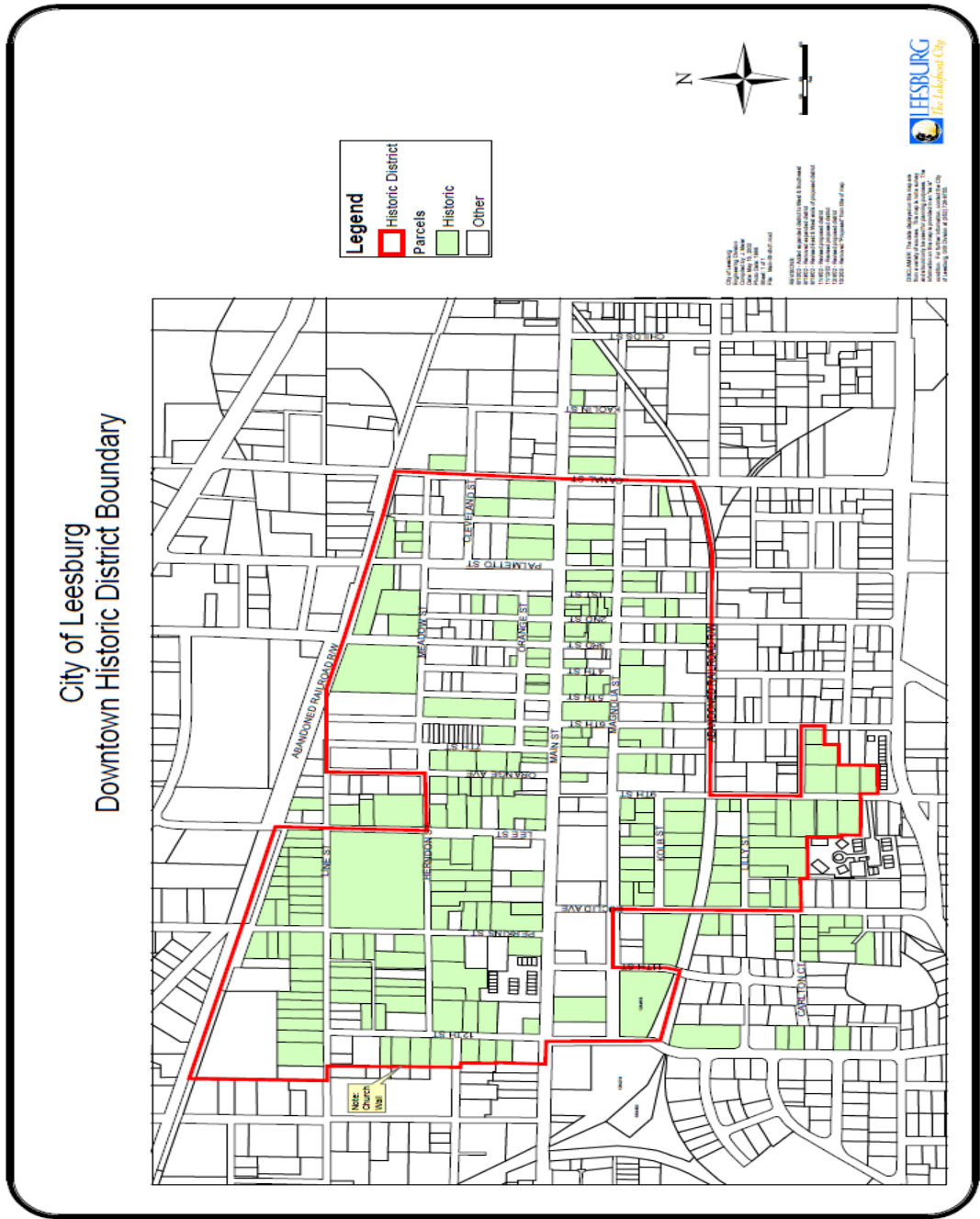
THE CITY OF LEESBURG, FLORIDA

Mayor

ATTEST:

City Clerk

EXHIBIT A – LEESBURG DOWNTOWN HISTORIC DISTRICT BOUNDARY





DRAFT SUMMARY MINUTES OF THE REGULAR MEETING
OF THE PLANNING COMMISSION
VENETIAN CENTER
THURSDAY, JANUARY 21ST, 2020 - 4:30 P.M.

The Planning Commission of the City of Leesburg held its regular meeting Thursday, January 21st, 2021, at Venetian Center.

Chairman Ted Bowersox called the meeting to order at 4:30 p.m.

The following Commission members were present:

Tim Sennett – Vice-Chairman
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The following Commission members were absent:

Ted Bowersox
John O'Kelley
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City staff in attendance included Dan Miller, Planning & Zoning Manager, Dianne Pacewicz, Planner, Kandi Harper, Senior Planner, Sabrina Mitchell, Administrative Assistant II, and City Attorney Fred Morrison was also present.

The meeting opened with an invocation given by Vice-Chairman Sennett, followed by the Pledge of Allegiance to the Flag.

Dan Miller informed the audience of the rules of participation and the need to sign the speaker's registry. He also informed Commissioners and the audience that the City Commission meeting dates are tentatively scheduled.

Vice-Chairman Sennett called for the fourth case under new business be brought forward.

1. **PUBLIC HEARING CASE #CPTA-20-178 – HISTORIC PRESERVATION DISTRICT DENSITY BONUS – COMPREHENSIVE PLAN TEXT AMENDMENT**

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE CITY OF LEESBURG COMPREHENSIVE PLAN TO ESTABLISH CRITERIA FOR DENSITY BONUS BASED ON CERTAIN CRITERIA, ESTABLISHING APPROPRIATE POLICIES TO ENSURE COMPATIBILITY; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Mr. Miller stated we have two new cases and would like to speak about both cases together.

Dan Miller introduced case number #CPTA-20-178 – Historic Preservation District Density Bonus – Comprehensive Plan Text Amendment and case number #AMDT-20-279 – Historic Preservation District Density Bonus – Land Development Regulation Amendment Section 25 - 292 (25) into the record and entered the exhibits into the record with maps; Historic District, and photo exhibits, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the overall development, comprehensive plan text amendment; create a policy in the Future Land Use Element; allow the city to create a Density Bonus within Historic District, land development regulation; zoning code amendment; Chapter 25; create the process and procedures, Leesburg Historic District, went over Historic District area map; includes downtown Leesburg and some areas to south and west, proposing Ordinance, adopt; exhibit, proposed Comprehensive Plan Amendment Future Land Element Policy 1.1.8 and read Ordinance into the record, and went over Ordinance Section 25-292 (25), read into the record, and goes over requirements in code.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Mr. Miller read the Staff Recommendations for both cases into the record; Staff recommended approval for both cases.

Vice-Chairman Sennett stated if any questions from Staff.

Commissioners and Mr. Miller discussed clarification on page 3 of 7 item 1 (underutilized property; someone has property in that area; rental property, unable to rent for a year; no utilities, Mr. Miller replied if they could collect one full acre of land; one contiguous area, single-family home; can't do that; collect enough land; one full acre, CRA, Mr. Miller replied most of the area falls under CRA,

gives one carat, Historic District zoning; started/stopped; Mr. Miller gave a brief explanation of the Historic District, and stated if the program works here it could work in other areas; good ex: Mike and Pine St; Carver area; excellent area, start here; potentially expand or creates new programs; additional areas, any area that contains a concentration of underutilized area or slum; or abandoned properties; good carat; hoping very successful, move to other areas, change amount of land needed; based on area, need somewhere to start, beneficial/biggest hurdle; assistant living. Mr. Miller stated long term ownership time period; can't take care of property anymore; supports strength of downtown; housing supporting business downtown, consider assistant living; review procedure; intense review; public/staff, encouraged good positive development; potential to expand it.

Vice-Chairman Sennett stated any questions or comments from the public, and then closed the discussion from the public.

Vice-Chairman Sennett entertained a motion, and then the voting took place.

Commissioner Haliday made a MOTION for APPROVAL of case # CPTA-20-178 – HISTORIC PRESERVATION DISTRICT DENSITY – COMPREHENSIVE PLAN TEXT AMENDMENT Commissioner Fitzpatrick SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

Vice-Chairman Sennett called for the fifth case under new business be brought forward.

2. PUBLIC HEARING CASE #AMDT-20-279 – HISTORIC PRESERVATION DISTRICT DENSITY BONUS – LAND DEVELOPMENT REGULATION AMENDMENT SECTION 25 – 292 (25)

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING CITY OF LEESBURG LAND DEVELOPMENT REGULATIONS BY ESTABLISHING CRITERIA FOR DENSITY BONUSES IN ARTICLE IV – SECTION 25-292 SUPPLEMENTAL DISTRICT REQUIREMENTS; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Vice-Chairman Sennett entertained a motion, and then the voting took place.

Commissioner Fitzpatrick made a MOTION for APPROVAL of case # AMDT-20-279 – HISTORIC PRESERVATION DISTRICT DENSITY BONUS – LAND DEVELOPMENT REGULATION AMENDMENT

SECTION 25 - 292 (25) Commissioner Haliday SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

DISCUSSION

None.

ANNOUNCEMENTS

Motion made to adjourn meeting by Commissioner Marshall and seconded by Commissioner Carter.

ADJOURNMENT

Approximately 5:35 p.m.

Tim Sennett, Vice-Chairman

Sabrina Mitchell, Administrative Assistant II

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.A.6.

Meeting Date: May 24, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance of the City of Leesburg, Florida, amending the mixed-use PUD (Planned Unit Development) on approximately 640 +/- acres to extend the timeframe of the development for a property generally located north of Poe Road at the intersection of County Road 44, west of Radio Road and extending northwest to Haines Creek, as legally described in Sections 3, 4, and 5, Township 19 South, Range 25 East, Lake County, Florida; and providing an effective date. (Orange Bend)

Staff Recommendation:

Planning and Zoning Staff and Planning Commission recommend approval of the request to amend the mixed-use PUD (Planned Unit Development) on approximately 640 +/- acres to extend the timeframe of the development.

Analysis:

The project site is approximately 640 +/- acres, and is generally located north of Poe Road at the intersection of CR 44, west of Radio Road and extending northwest to Haines Creek, as shown on the attached maps. At this time, the property is ranch land. No changes to the conditions of the approved Planned Unit Development have been requested. The existing land uses surrounding the property are residential, orange grove, timber, pasture, school, government, and church. City of Leesburg utilities are available nearby.

The Planning Commission held a public hearing on the application on March 18, 2021 and recommended approval.

Procurement Analysis:

N/A

Options:

1. Approve the request for extended timeframe of PUD (Planned Unit Development); or
2. Other such action as the Commission may deem appropriate.

Fiscal Impact:

Future development of this site will create a substantial positive fiscal impact on the City of Leesburg, in the form of impact and utility fees, plus ad valorem taxes.

Submission Date and Time:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE MIXED-USE PUD (PLANNED UNIT DEVELOPMENT) ON APPROXIMATELY 640 +/- ACRES TO EXTEND THE TIMEFRAME OF THE DEVELOPMENT FOR A PROPERTY GENERALLY LOCATED NORTH OF POE ROAD AT THE INTERSECTION OF COUNTY ROAD 44, WEST OF RADIO ROAD AND EXTENDING NORTHWEST TO HAINES CREEK, AS LEGALLY DESCRIBED IN SECTIONS 3, 4, AND 5, TOWNSHIP 19 SOUTH, RANGE 25 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. (ORANGE BEND)

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA, that:

Section 1.

Based upon the petition of Lowrie Brown Investment Co., John M. Brown, Vice President, (Greg Beliveau, agent) petitioner of the property hereinafter described, which petition has heretofore been approved by the City Commission of the City of Leesburg Florida, pursuant to the provisions of the Laws of Florida, the said property located in Lake County, Florida, is hereby amended to extend the timeframe of the development, to-wit:

(Legal Description)
(See Exhibit B)

Section 2.

This ordinance shall become effective upon its passage and adoption, according to law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the 24th day of May 2021.

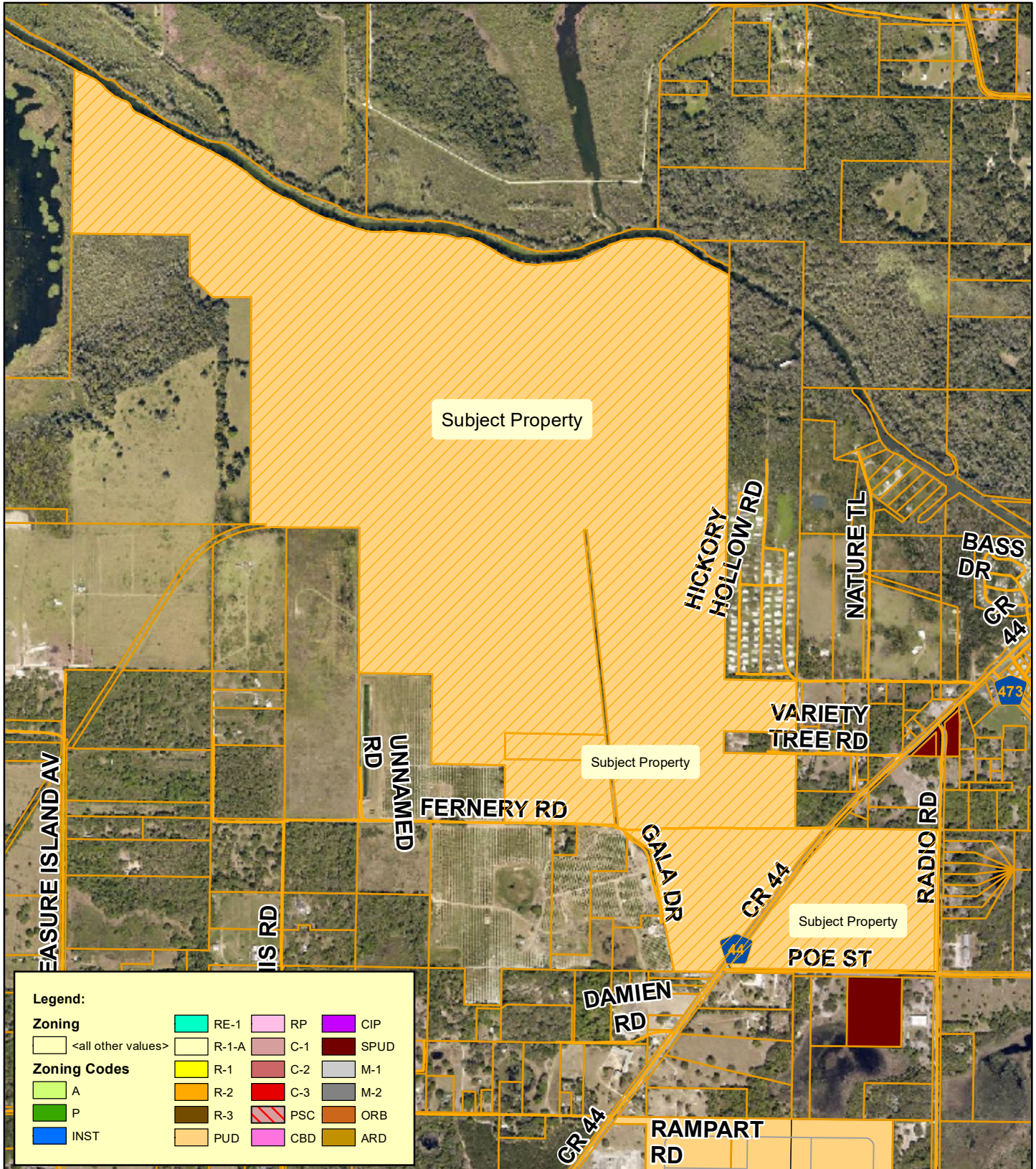
THE CITY OF LEESBURG, FLORIDA

Mayor

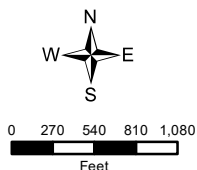
ATTEST:

City Clerk

Zoning



**Planning
& Zoning
Division**



PUD-21-27 - Orange Bend PUD

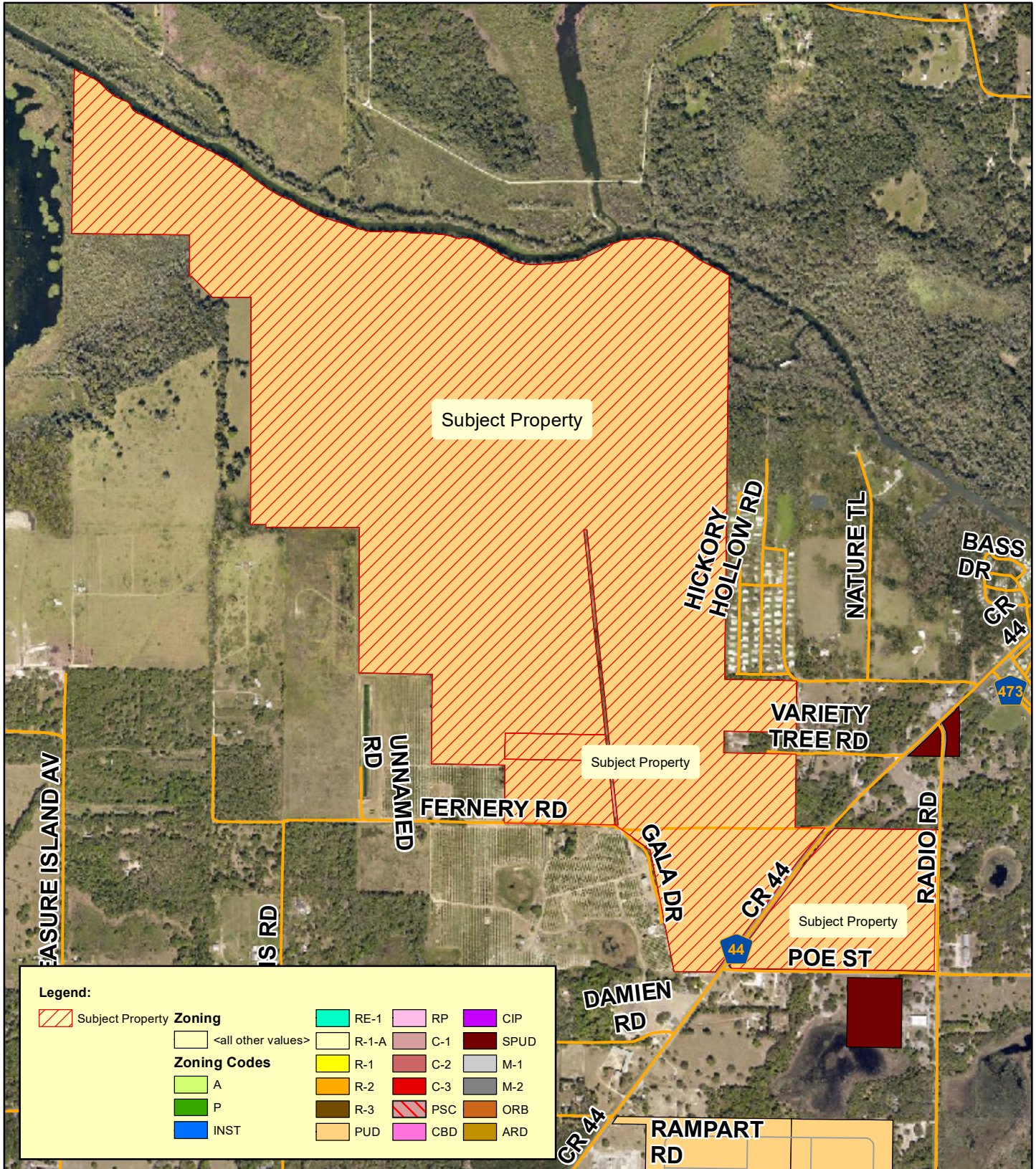
AK#s: 1535921; 1387060

Sections 33 and 34, Township 18 South, Range 25 East; and

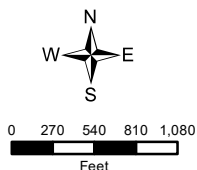
Section 03, Township 19 South, Range 25 East

March 3, 2021

Zoning



**Planning
& Zoning
Division**



PUD-21-27 - Orange Bend PUD

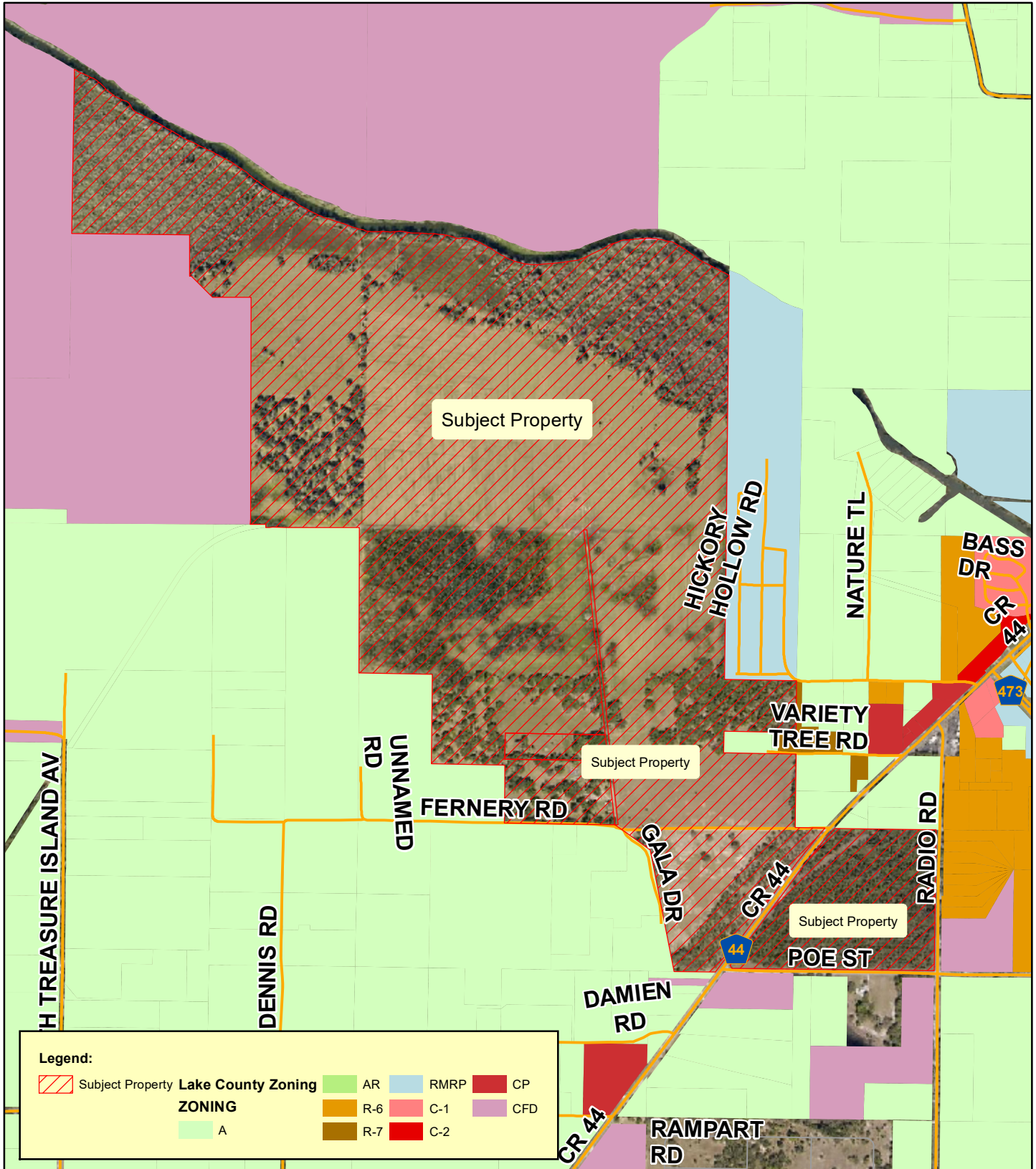
AK#s: 1535921; 1387060

Sections 33 and 34, Township 18 South, Range 25 East; and

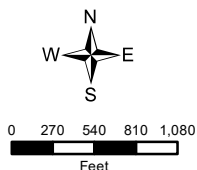
Section 03, Township 19 South, Range 25 East

March 3, 2021

Lake County Zoning



**Planning
& Zoning
Division**



PUD-21-27 - Orange Bend PUD

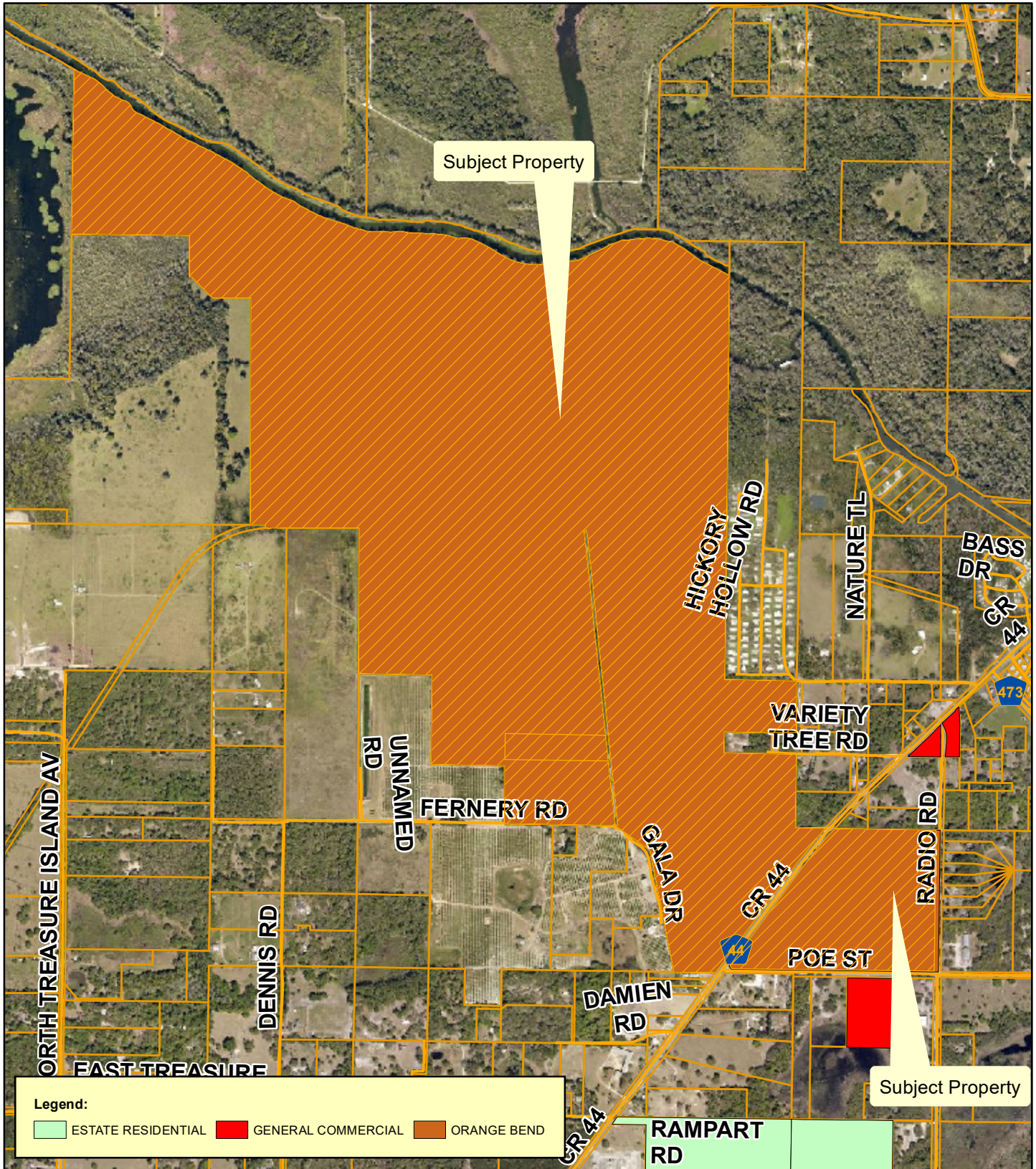
AK#s: 1535921; 1387060

Sections 33 and 34, Township 18 South, Range 25 East; and

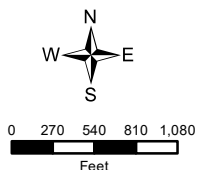
Section 03, Township 19 South, Range 25 East

March 3, 2021

Future Land Use



**Planning
& Zoning
Division**



PUD-21-27 - Orange Bend PUD

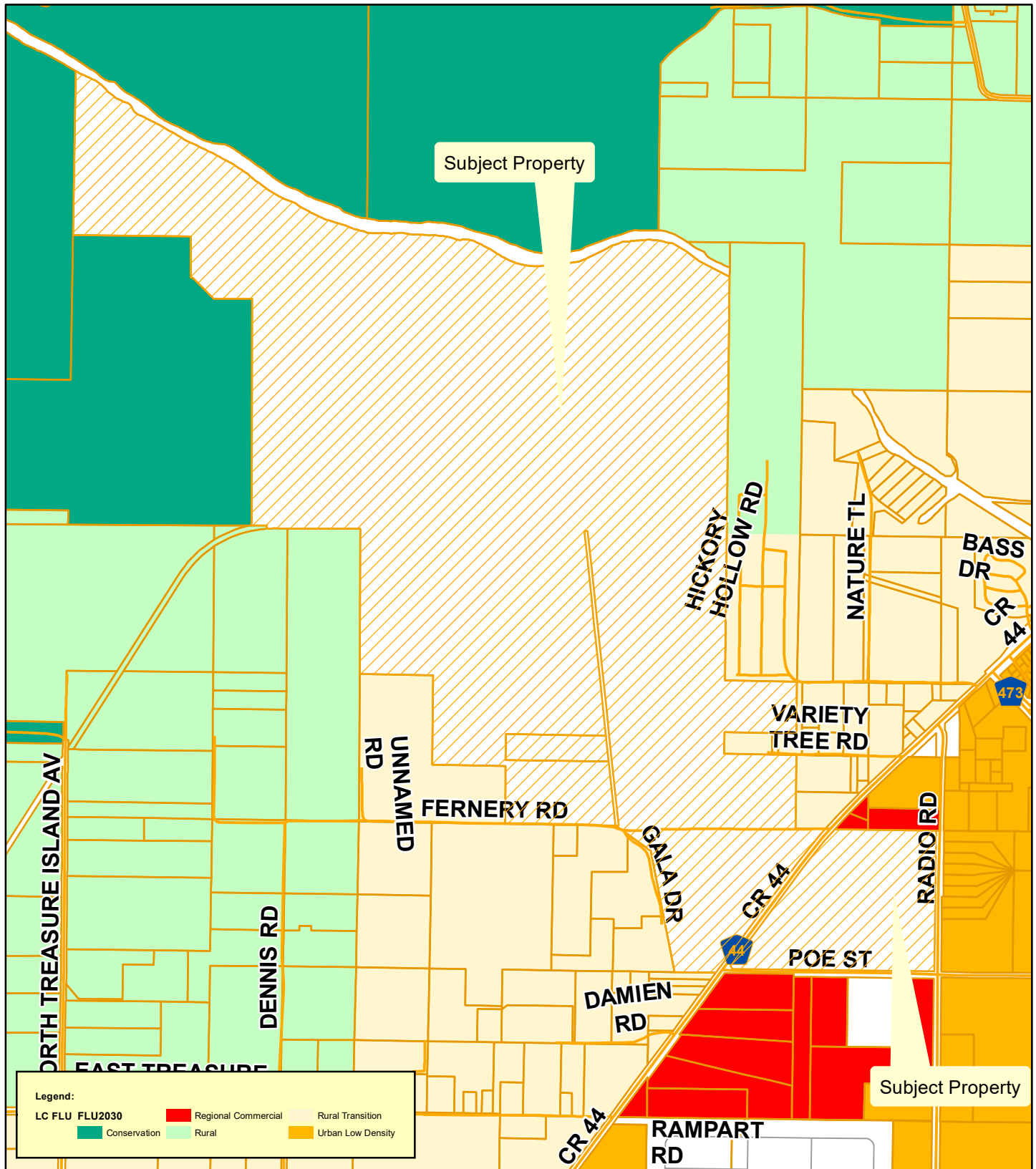
AK#s: 1535921; 1387060

Sections 33 and 34, Township 18 South, Range 25 East; and

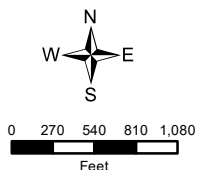
Section 03, Township 19 South, Range 25 East

March 3, 2021

Lake County Future Land Use



**Planning
& Zoning
Division**



PUD-21-27 - Orange Bend PUD

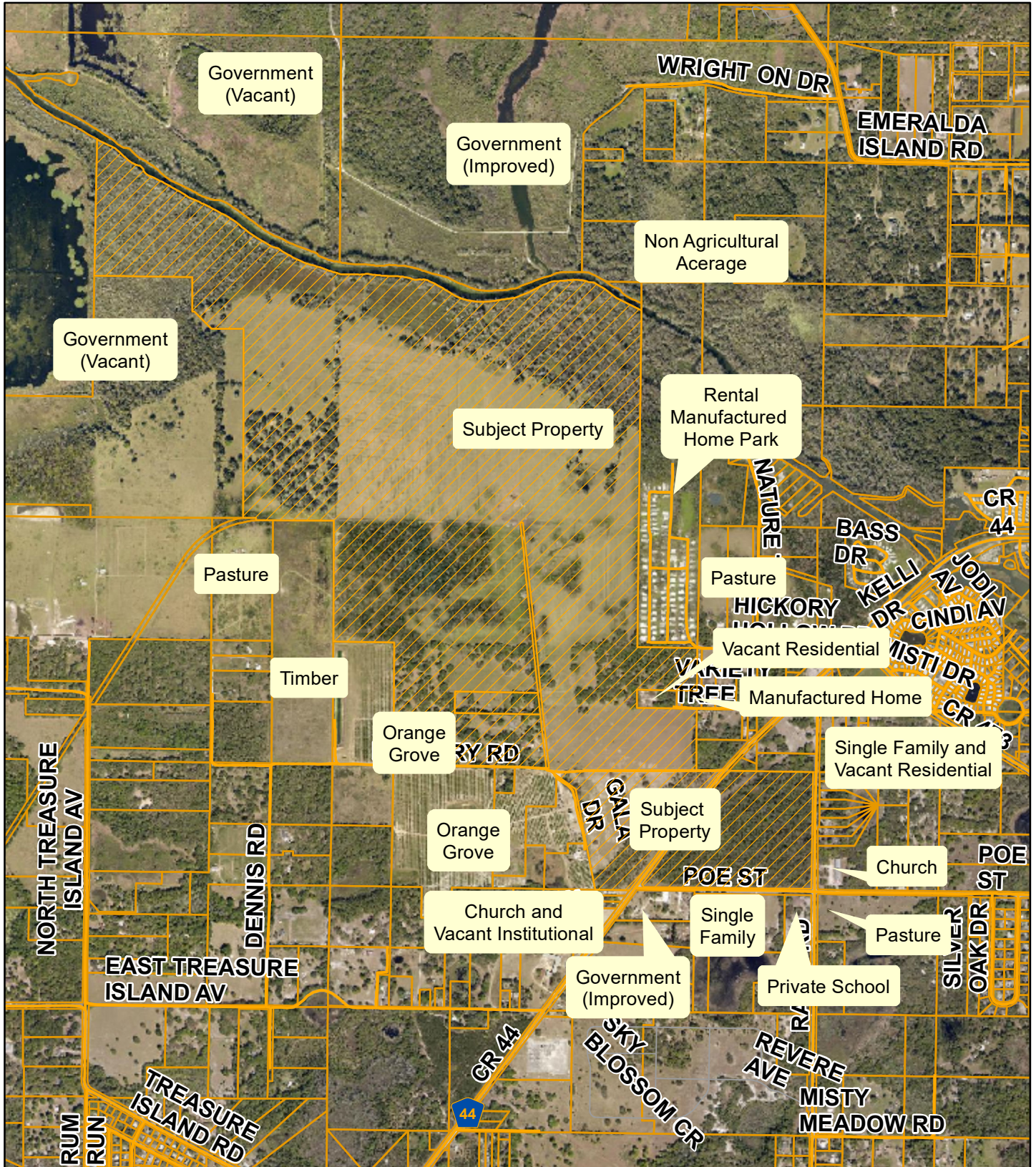
AK#s: 1535921; 1387060

Sections 33 and 34, Township 18 South, Range 25 East; and

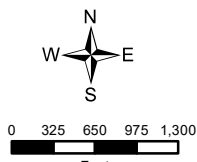
Section 03, Township 19 South, Range 25 East

March 3, 2021

Surrounding Land Uses



**Planning
& Zoning
Division**



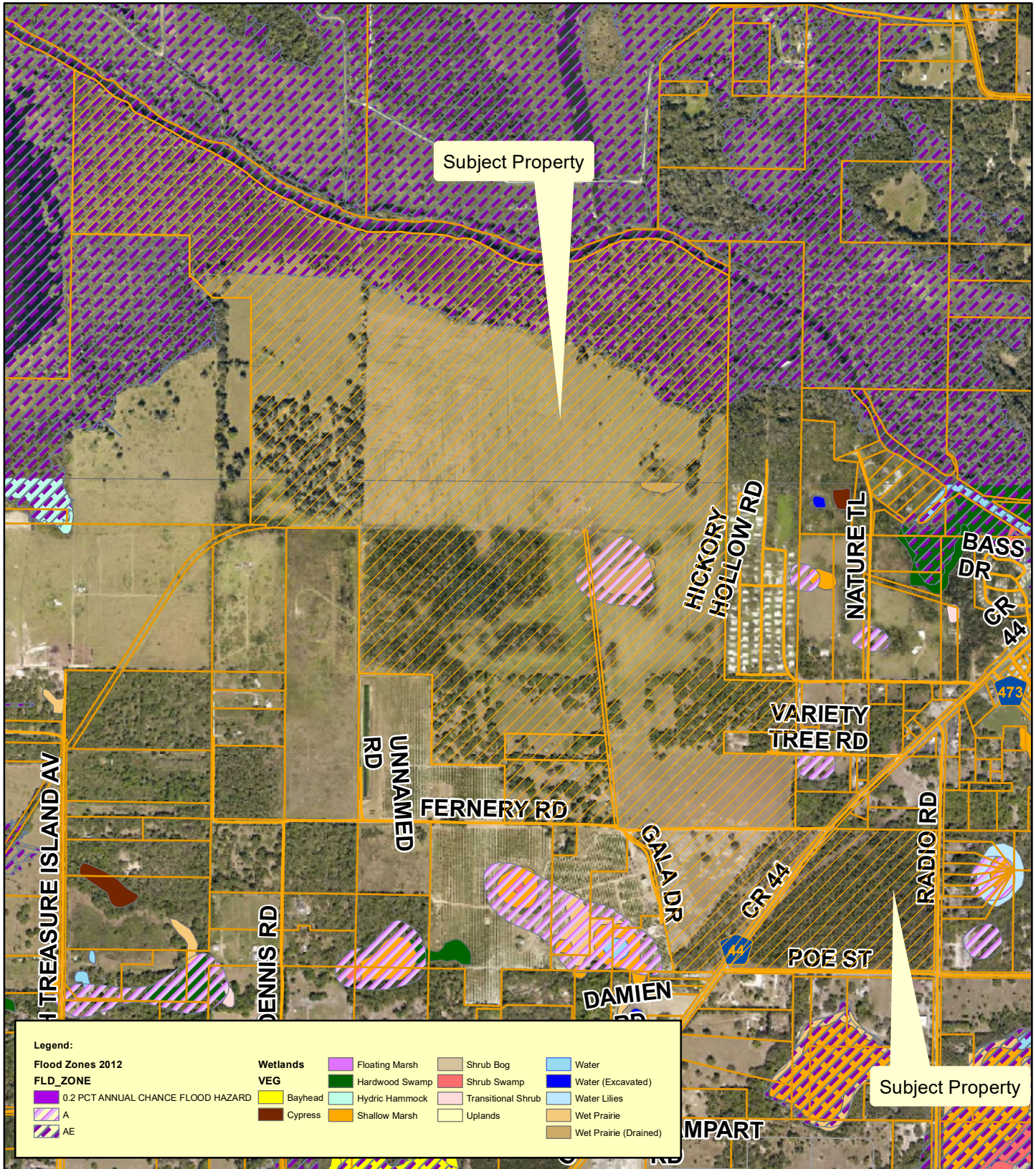
PUD-21-27 - Orange Bend PUD

AK#s: 1535921; 1387060

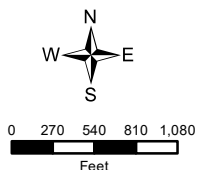
Sections 33 and 34, Township 18 South, Range 25 East; and
Section 03, Township 19 South, Range 25 East

February 26, 2021

Wetlands and Flood Zones



**Planning
& Zoning
Division**



PUD-21-27 - Orange Bend PUD

AK#s: 1535921; 1387060

Sections 33 and 34, Township 18 South, Range 25 East; and

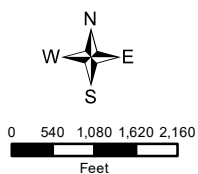
Section 03, Township 19 South, Range 25 East

March 3, 2021

Community Redevelopment Area



**Planning
& Zoning
Division**



PUD-21-27 - Orange Bend PUD

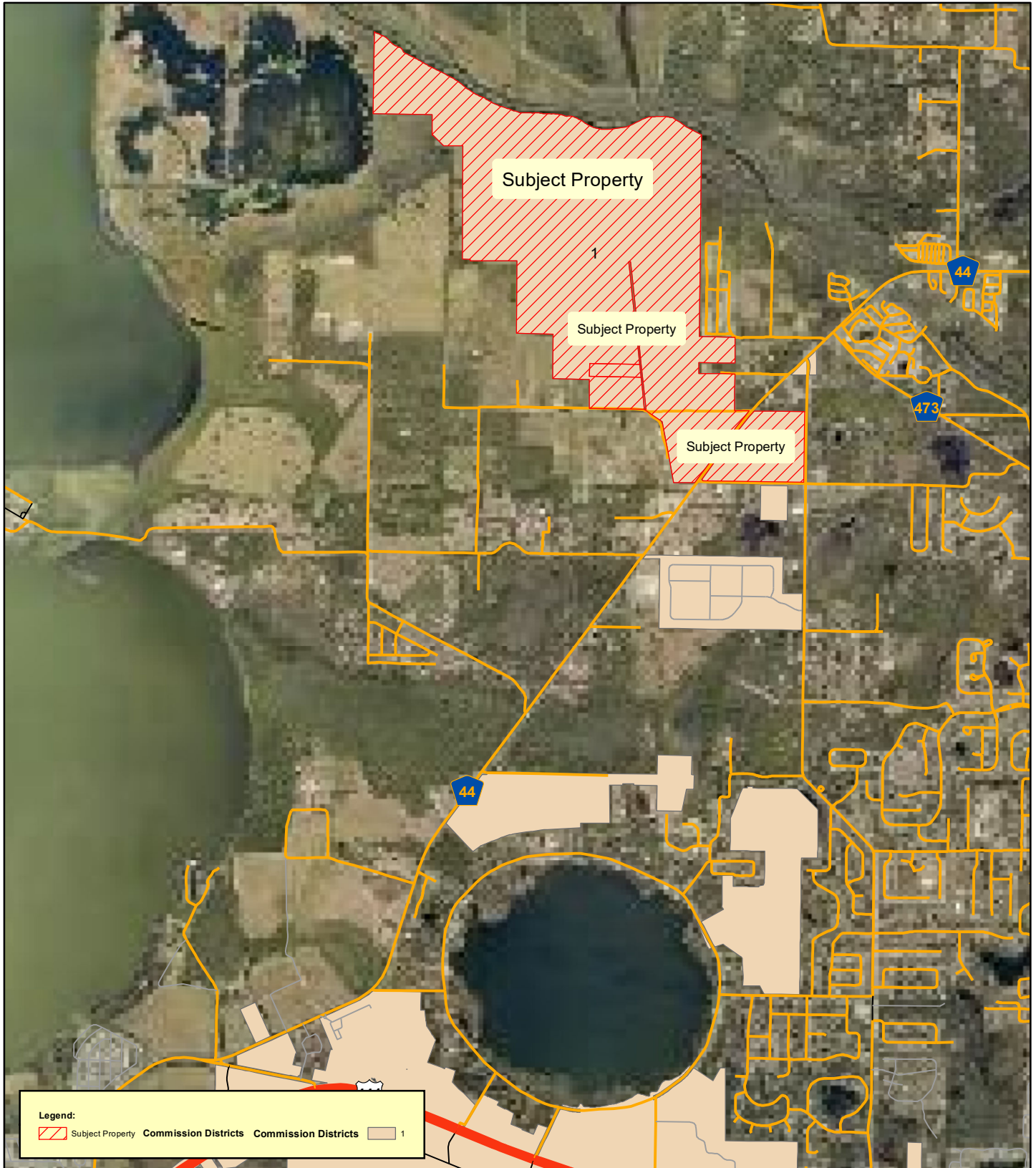
AK#s: 1535921; 1387060

Sections 33 and 34, Township 18 South, Range 25 East; and

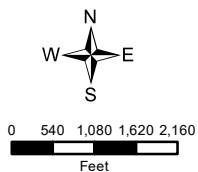
Section 03, Township 19 South, Range 25 East

March 3, 2021

Commission District



**Planning
& Zoning
Division**



PUD-21-27 - Orange Bend PUD

AK#s: 1535921; 1387060

Sections 33 and 34, Township 18 South, Range 25 East; and

Section 03, Township 19 South, Range 25 East

March 3, 2021

**CITY OF LEESBURG PLANNING & ZONING DIVISION
DEPARTMENTAL REVIEW SUMMARY**

DATE: March 1, 2021
OWNER: Lowrie Brown Investment Co., John M. Brown, Vice President
PETITIONER: Lowrie Brown Investment Co., John M. Brown, Vice President
PROJECT: Orange Bend PUD
REQUEST: Amend existing mixed used PUD
CASE NO.: PUD-21-27

THE FOLLOWING COMMENTS RECEIVED FROM EACH DEPARTMENT:

POLICE

No comments received as of 3/12/21

FIRE

No comments from Fire Department. Amanda Stevenson 3/2/21

ELECTRIC

This is outside Leesburg Electric's service territory. Steve Davis 3/1/21

GAS

No comments received as of 3/12/21

GIS

No comment from the GIS department. Tammy Magamoll 3/2/21

BUILDING

No comments received as of 3/12/21

PUBLIC WORKS

Public Works has no issues with this! Cliff Kelsey 3/5/21

ADDRESSING

No comments received as of 3/12/21

ECONOMIC DEVELOPMENT

No comments received as of 3/12/21

LAKE COUNTY PUBLIC WORKS

Did they submit a traffic impact analysis for the proposed PUD? Lake County will need to review this TIA and LS-MPO will need to review it as well. Thanks, Seth Lynch 3/5/21

I have attached comments for the PUD-21-27 Orange Bend PUD. Please let me know if you have

questions or comments. Also, this development will most likely have to install a traffic signal at the entrance off of CR 44. The traffic study will have to meet the Lake-Sumter MPO guidelines for TIA and include a signal warrant analysis. They will need to utilize the most recent data that MPO has for CR 44 and surrounding roads. Thanks, Seth Lynch 3/9/21

LAKE COUNTY SCHOOLS

Please find attached the school districts' Adequate Public Facilities Determination letter for the Orange Bend PUD. Let me know if you have any questions. Helen LaValley 3/5/21

PUBLIC RESPONSES

Approval

1 approval

Disapproval

1 disapproval with comments

No comment

no comment

Notice of Appearance filed:

PUBLIC COMMENTS (APPROVAL WITH REQUESTS)

PUBLIC COMMENTS (DISAPPROVAL)

Donald W. Shoemaker – Hwy 441 – Radio Rd & 473 can not handle any more traffic, no more housing in this area till infrastructure is vastly improved.

PUBLIC COMMENTS (UNDECIDED)

Mary R. Trowbridge – Will large (25" DBH & greater or large hammocks) of oak trees be maintained, especially on the section on Radio Road (between Poe & 44)? & there are some beautiful trees & hammocks here* How are traffic patterns being addressed? Entrances/especially on Radio Rd. Where?



Department of Public Works, Engineering Division
P.O. Box 7800 • 350 N. Sinclair Ave. • Tavares, FL 32778

March 9, 2021

Dan Miller,
Planning & Zoning Manager
City of Leesburg
Planning and Zoning Department
204 North 5th Street
Leesburg, Florida 34749
(sent via email)

RE: PROJECT: Orange Bend / Planned Unit Development - Mixed Use Planned Use Development
CASE NO.: PUD-20-27

Lake County recommended requirements for the Orange Bend PUD impacts to roadways and drainage systems:

CR 44:

- Access off of CR 48 will need to utilize Rumford Rd. in order to meet Lake County access management code requirements for spacing from Number Two Road.
- Left and Right Turn Lanes on CR 44 at the development's entrance will be required.
- A sidewalk will be required along the western side of CR 44.
- A trail will be required along the eastern side of CR 44 for the Lake Yale Trail shown on the Trail Master Plan. This trail must be included in the design for the offsite road improvements and constructed with the development.
- Additional right-of-way will be required for CR 44 meeting a minimum width of 120-ft but may be larger with the offsite road and right-of-way improvements.
- Utility easements will need to be provided along CR 44.

Poe Road:

- An 8-ft sidewalk (sidewalk) will be required along Poe Rd northern frontage from CR 44 to Radio Rd.

Radio Road:

- A sidewalk will be required along Radio Rd.

P 352.253.6000 • F 352.253.9025
Board of County Commissioners • www.lakecountyfl.gov

Douglas B. Shields
District 1

Sean M. Parks, AICP, QEP
District 2

Kirby Smith
District 3

Leslie Campione
District 4

Josh Blake
District 5

Fernery Road:

- A portion of Fernery Road is shown to be fully within the development boundaries. This portion of the road will need to be vacated and removed. From CR 44 to the subdivision internal road. The portion west of internal connector road will need to be improved to meet city and county paved road standard.
- A sidewalk should be provided along Fernery Rd.
- Additional right-of-way for Fernery Rd will need to be dedicated with future development plans.

Internal connectivity:

- The development is recommended to have internal pedestrian and bicycle connectivity throughout the development and to the Lake Yale Trail along CR 44.
- Fernery Rd shall be allowed access through the proposed internal connector road to and from CR 44.
- Gala Dr and Denis Rd, both unmaintained roads off Fernery Rd, shall be allowed access through the proposed internal connector road to and from CR 44.

Traffic:

- A Traffic Impact Analysis will be required of this development for review by the County.

Flood Study:

- Development will be responsible for a drainage and flood study to determine the flood zones within and partially crossing into the development area. The flood study will require review by both the city and county. The study will evaluate downstream impacts from stormwater outfall from this site.

Stormwater Management:

- The site's stormwater management design will need to be reviewed by Lake County when submitted to both the City of Leesburg and St Johns River Water Management District. We may require Lake County stormwater design standards on ponds that outfall or affect surrounding unincorporated lands.

Sincerely,

Seth Lynch

Seth Lynch
Development Engineer/Project Manager
Lake County Department of Public Works
Engineering Division
slynch@lakecountyfl.gov

Cc: Fred Schneider, Public Works Director for Lake County
Jeff Earhart, Engineering Manager for Lake County
Tim McClendon, Planning Director for Lake County
Kandi Harper, Senior Planner for City of Leesburg
Michael Woods, Executive Director for Lake-Sumter MPO



Superintendent:
Diane S. Kornegay, M.Ed.

School Board Members:
District 1
Bill Mathias
District 2
Kristi Burns, Ph.D.
District 3
Marc Dodd
District 4
Molly Cunningham
District 5
Stephanie Luke

201 West Burleigh Boulevard • Tavares • FL 32778-2496
(352) 253-6500 • Fax: (352) 253-6503 • www.lake.k12.fl.us

March 5, 2021

Via Email

Ms. Kandi Harper, Senior Planner
Planning and Zoning Dept.
City of Leesburg
204 North 5th Street
Leesburg, FL 34749

RE: Orange Bend PUD Amendment (PUD-21-27) – City of Leesburg
Adequate Public Facilities Determination (APF01-2021)

Dear Ms. Harper:

The School District has reviewed the proposed residential development information for property located in proximity to the intersection of Poe Road and CR44. The property is approximately 640 +/- acres. The proposed development will consist of 800 single-family units and 195 multi-family units for 995 dwelling units.

The residential development will generate approximately three hundred thirty five (335) students. Based on current school attendance zones, the schools impacted by the proposed residential project are as follows:

- | | |
|------------------------------|---------------|
| • Treadway Elementary School | 125% Capacity |
| • Tavares Middle School | 81% Capacity |
| • Tavares High School | 110% Capacity |

This project does have the potential to adversely impact the assigned schools. The District's current Five Year Capital Plan includes a capital project to provide relief for the high school. However, a capital project has not been scheduled to address the elementary school capacity. In order to provide capacity relief to the elementary school a potential attendance boundary adjustment may be required in the future.

Please be advised that school concurrency review is required prior to final development order approval. The information contained in this letter does not constitute school concurrency review. The capacities referenced above do not include current valid capacity reservations. Please be advised that proportionate share mitigation may be required at time of school concurrency review.

Should you have any questions or need additional information please contact me at (352) 253-6694 or by email at lavalleyh@lake.k12.fl.us.

Sincerely,

Helen LaValley
Growth Planning Department

Encl: Adequate Public Facilities Determination

"Equal Opportunity in Education and Employment"



Lake County Schools Adequate Public Facilities Determination

REVIEWING AUTHORITY	Lake County Schools	LCS APF01-2021
PROJECT NAME/CASE#	Orange Bend PUD Amendment (PUD-21-27)	
ITEM DESCRIPTION	Proposed 800 single family dwelling units and 195 multi-family units. 640 acres	
LOCATION	North of intersection of Poe Road and CR44, west of Radio Road, extending northwest to Haines Creek	
AK's	1387060, 1535921	

	SF-DU	MF-DU	MH-DU	SF Impacts	MF Impacts	Totals
NEW DU IMPACT (units)				800	195	995
STUDENT GENERATION	0.350	0.282	0.185	280	55	335
Elementary School	0.157	0.153	0.095	125	30	155
Middle School	0.079	0.061	0.044	63	12	75
High School	0.114	0.068	0.046	91	13	104

*Students generated may differ from distribution percentages due to rounding

CSA #7

	Enrollment 2024-2025	Concurrency Capacity*	Projected Five Year Capacity %	Student Enrollment w/ Impact	% of Perm. Capacity w/ Impact	Planned Capacity Project
Assigned Schools:						
Treadway Elementary	887	833	106%	1,042	125%	No
Tavares Middle	1,079	1,427	76%	1,154	81%	No
Tavares High	1,564	1,514	103%	1,668	110%	Yes

*Lake County School District Five-Year Plan, Fiscal Year 2021-2025

Please note that this is NOT a School Concurrency capacity reservation.

Please be aware that at time of school concurrency review that proportionate share mitigation may be required.
This review does not include already reserved capacities.

Prepared by: Helen LaValley, Lake County Schools Growth Planning Dept.

Issue Date: 3/5/2021



CITY OF LEESBURG PLANNING & ZONING DIVISION RECOMMENDATIONS

OWNER: Lowrie Brown
PROJECT: Lowrie Brown Ranch – Orange Bend
REQUEST: Planned Developments Rezoning - PUD (Planned Unit Development)
CASE NO.: RZ-21-27 Lowrie Brown Ranch – Orange Bend
MEETING DATE: March 18, 2021

THE PLANNING & ZONING DIVISION RECOMMENDS:

APPROVAL of the request

based on the following information and reason(s):

1. The request to annex the subject property, amend the Comprehensive Plan Future Land Use Map and rezone the property to PUD (Planned Unit Development) was approved in 2017 under Ordinances 17-06, 17-08 and 17-09 respectively.
2. The proposed request is to delete ***Section 13.C Development Phasing***, from the approved PUD zoning. This section did require substantial commencement within a 48-month time period.
3. Planning and Zoning staff recommendations of previous rezoning (case RZ 16-67 (attached hereto) as approved by ordinance 17-08, remain valid reasons for approval of this request.
4. Phasing provisions in PUD zonings have not had the intended effect of moving development forward, but, over the course of time, have generally proven to be unnecessary regulations and disincentives to future development. Over the past year, staff has begun removing this provision from the requirements from the majority of PUD zoning applications.

Action Requested:

1. Vote to approve the recommendation to amend the zoning conditions on the subject property to eliminate ***Section 13.C Development Phasing*** from the approved Orange Bend Planned Unit Development Conditions, which include Attachment 1 (October 20, 2016 Staff Recommendation), and Exhibits A-C dated March 18, 2021 and forward to the City Commission for consideration.



2016 RECOMMENDATION (Attachment 1)
CITY OF LEESBURG PLANNING & ZONING DIVISION
RECOMMENDATIONS

OWNER: Lowrie Brown
PROJECT: Lowrie Brown Ranch
REQUEST: Planned Developments Rezoning - PUD (Planned Unit Development)
CASE NO.: RZ-16-87
MEETING DATE: October 20, 2016

THE PLANNING & ZONING DIVISION RECOMMENDS:

APPROVAL of the request

for the following reason(s):

1. The proposed request to rezone the subject property from A (Agricultural) and County R-1 (Rural Residential) to City PUD (Planned Unit Development) is compatible with adjacent property zoned A (Agricultural) and County R-1 (Rural Residential) to the north, west and south, R-3 (Medium Residential District) to the west and south, and R-6 (Urban Residential District) to the east.
2. The proposed request is compatible with the existing future land use designation of County Urban Low Density to the north, south and west, and with property having an existing future Land Use of Urban Medium Density to the east.
3. The proposed request is consistent with the City's Growth Management Plan, Future Land Use Element, Goal I, Objective 1.6.

Action Requested:

1. Vote to approve the recommendation to rezone the subject property from County A (Agricultural) and County R-1 (Rural Residential) to City PUD (Planned Unit Development) with the Brown Ranch Planned Unit Development Conditions attached as Exhibits A-C hereto, dated October 20, 2016 and forward to the City Commission for consideration.

BROWN RANCH
(Orange Bend)
PLANNED UNIT DEVELOPMENT CONDITIONS
March 18, 2021

This Planned Unit Development Conditions for a PUD (Planned Unit Development) District is granted by the City of Leesburg Planning Commission, Lake County, Florida to Lowrie Brown Investment Company "Permittee" for the purposes and subject to the terms and conditions as set forth herein pursuant to authority contained in Chapter 25 "Zoning", Section 25-278 "Planned Unit Development" of the City of Leesburg Code of Ordinances, as amended.

BACKGROUND: The "Permittee" has requested a Planned Unit Development (PUD) zoning district to allow construction of a proposed mixed use development comprised of a maximum of 799 single family and 196 townhouse and multifamily residential units, and 283,700 square feet of mixed use (commercial & government/institutional uses) on approximately 640 acres generally located north of County Road 44 and south of Haines Creek, on a site annexed into the City of Leesburg in accordance with their PUD application and supplemental information.

1. **PERMISSION** is hereby granted to Lowrie Brown Investment Company to construct, operate, and maintain a Planned Unit Development in and on real property in the City of Leesburg, in accordance with the requirements set forth herein. The property is more particularly described as follows:

2. **LEGAL DESCRIPTION:**
See attached legal Exhibit B.

3. **LAND USES**

The above-described property, containing approximately 640 acres, shall be used for single family, townhouse and multi-family residential uses, along with a mix of commercial and institutional/government uses, as described below. The property is currently in agricultural uses and shall be allowed to remain in such use until such time as each phase is developed.

- A. **Permitted Uses**

1. Detached single family residential units
 2. Townhouse single family residential units
 3. Multi-family residential units
 4. Retail shops
 5. Banking and investment services
 6. Restaurants/Diners
 7. Bakeries
 8. Liquor/package stores
 9. Indoor recreation and entertainment
 10. Medical/ dental offices and services
 11. Personal Services
 12. Music/dance/gymnasium uses
 13. Community Centers
 14. Mini-storage/flex space
 15. Churches/houses of worship
 16. Art galleries

17. Hotels
18. General office uses
19. Lounges/bars
20. Government offices and uses
21. Education facilities
22. Day Care
23. Residential Uses
24. Youth Activity centers
25. ACLF/Assisted living/nursing homes
26. RV/Boat Storage
27. Accessory structures for residential uses.
28. Temporary sales center offices (modular or site-built) shall be allowed during construction and sales in all areas.
29. Interim Agricultural uses as noted above, to include timber, citrus, cattle, horses, hay and sod production. These uses shall be allowed to continue until such time as the nearest pod has achieved either 50% build out of the square footage for commercial uses or 50% of the total residential units are constructed for the nearest residential pod. Should any disagreement over use arise, City Staff may consult Lake County Agriculture zoning district regulations.

B. Support Services

1. A site, not to exceed one (1) acre, shall be dedicated to the City of Leesburg for support services, i.e. fire station, police substation, emergency services or other municipal uses.

C. Prohibited Uses

1. All uses not specifically permitted within these conditions under Permitted Uses above shall be prohibited.

D. Other Related Uses

1. Other related uses may be included by written determination of the Planning & Zoning Manager. Such uses shall be consistent with the intent and purpose of the zoning requirements set forth in these PUD conditions, and shall meet the parking standards as required herein. Parking availability may limit the permitted uses.

2. Development/Land Use Matrix

Pod #	Acreage	Land Use	Building SF	Density	MF Units	SF Units
Pod 1	11.69	Commercial	100,000	8500 sf/ acre		
Pod 2	19.73	MUC	165,000	8500 sf/ acre		
Pod 3	13.06	MF		8.0	100	
Pod 4A	5.70	MF		6.0	34	
Pod 4B	10.16	MF		6.0	62	
Pod 5	9.65	SF		4.0		38
Pod 6	29.19	SF		5.5		161
Pod 7	28.46	SF		4.0		113
Pod 8	23.46	SF		3.0		70
Pod 9	8.83	Club		0.0		
Pod 10	18.08	SF		2.0		36
Pod 11	16.35	SF		3.0		49
Pod 12	5.76	SF		2.0		12
Pod 13	10.67	SF		2.0		21
Pod 14	7.68	SF		2.0		15
Pod 15	47.56	SF		1.5		71
Pod 16	27.18	SF		3.0		82
Pod 17	27.27	SF		2.0		55
Pod 18	12.86	SF		6.0		76
Pod 19	2.20	Commercial	18,700	8500 sf/ acre		
TOTAL	335.54		283,700		196	799

Phases may be developed in any order depending on engineering and market demand.

4. DEVELOPMENT STANDARDS

A. General Development Standards

1. Where not addressed by these Planned Unit Development Conditions, the minimum development standards for all development shall default to the requirements City of Leesburg Code of Ordinances as amended.
2. Minimum distance between structures shall be 10 feet; measured from building wall to building wall and the roof overhang shall not exceed 40 percent of the distance between the building wall and the property line.
3. Accessory structures shall have a minimum rear and side setback of 5 feet and single accessory structures that are not attached to the principal structure shall not occupy more than 30 percent of the required rear yard.
4. An attached screened enclosure (no solid roof) must maintain a minimum setback of five (5) feet from the side and rear property line.
5. As part of the site plan approval process, city staff shall review final site design standards in accordance with the approved PUD (Planned Unit Development) zoning conditions set forth herein.

B. Residential Development Standards

1. The project shall contain a maximum gross density not to exceed 1.6 units per acre on the approximately 640 acre site, as shown in the Development/Land Use Matrix in Section 3 above.
2. The minimum residential lot development standards shall be as follows:
 - a. For detached single family units:
 - i. Minimum house size: 1,400 square feet. Each additional bedroom to added above the minimum house size shall be a minimum of 120 square feet.
 - ii. Each residential structure shall have a minimum two car garage
 - iii. Minimum lot size shall be 6,250 square feet.
 - iv. Minimum lot width for all interior lots shall be no less than 50 feet.
 - v. Maximum impervious surface for residential lots shall be sixty-five (65) percent.
 - vi. Maximum building height: two (2) stories and 35 feet
 - vii. Minimum building setbacks for detached single family units shall be:
Front setback – 20 minimum (may be staggered);
Rear setback – 20 feet;
Side setback – 10 feet as stated in 4.A.2
Street side setback - 15 feet
Accessory structures – 5 feet
 - b. For single family townhouse units:
 - i. Minimum house size: 1,100 square feet
 - ii. Minimum lot size shall be 2,200 sq. ft.
 - iii. Minimum lot width shall be no less than 22 feet.
 - iv. Maximum impervious surface for residential lots shall be sixty-five (65) percent.
 - v. Maximum building height: two (2) stories and 35 feet
 - vi. Minimum building setbacks for single family townhouse units shall be:
Front setback – 20 minimum (may be staggered);
Rear setback – 20 feet;

Side setback – 10 feet as stated in 4.A.2; common wall setback is 0 feet.

Street side setback - 15 feet

Accessory structures – 5 feet

c. Multi-family residential units

- i. Shall meet the minimum lot and standards as prescribed under the C-3 (Highway Commercial) zoning designation for residential units.
- ii. Shall be consistent with the Architectural and Design Standards noted in section 5.C shown herein.

d. Platting

- i. All lots shall be required to be platted through the City of Leesburg subdivision plan approval process.

C. Commercial Development Standards

1. Commercial Development Standards shall follow the C-3 (Highway Commercial) development standards except as amended herein.
2. Impervious surface coverage for commercial, government/ institutional areas within this site shall not exceed eighty (80) percent of the gross site area.
3. A minimum of twenty (20) percent of the site within the commercial, government/institutional areas shall be developed as open space, including retention areas, buffer and landscaped areas. Parking areas and vehicle access areas shall not be considered in calculating open space.
4. Maximum Building Height:
Two (2) stories and 45 feet for commercial.

D. Spatial Requirements

1. Spatial requirements set forth herein shall be deemed satisfied provided as-built measurements do not deviate from such requirement by more than five (5) percent.
2. Signage: All signs placed or constructed on the property shall comply with *Article VI- Sign Regulations, Section 25-421 through Section 25-426*, City of Leesburg Code of Ordinances, as amended.
3. Parking
 - a. The permittee shall have off-street parking spaces within the property per an approved site plan pursuant to the City of Leesburg Code of Ordinances, which shall include the required number of handicapped parking spaces.
 - b. The location and design of the proposed parking areas will be reviewed during the site plan review process to provide for adequate parking, which may limit the permitted uses of the site.

5. DESIGN STANDARDS AND REQUIREMENTS

A. Residential Design

1. All buildings shall utilize at least three (3) of the following design features including garage vehicle doors to provide visual relief along all elevations of the single-family units. Designs may vary throughout the development.
 - a) Dormers
 - b) Gables
 - c) Recessed or raised entries
 - d) Covered porch entries
 - e) Cupolas
 - f) Pillars or decorative posts
 - g) Bay window (minimum 12 inch projections)
 - h) Eaves (minimum 6-inch projections)
 - i) Front windows with arched glass tops and minimum 4-inch trim.
 - j) Garage vehicle doors shall incorporate the following elements: raised decorative panels, decorative glass panels or panes, decorative hinges, etc.
 - k) Front doors shall incorporate the following decorative elements: raised decorative panels, decorative glass panels or panes, decorative handles, etc.
2. Exterior building materials contribute significantly to the visual impact of a building on the community. These materials shall be well designed and integrated into a comprehensive design style for the project. The total exterior wall area of each building elevation shall be composed of one of the following:
 - a) At least thirty-five percent (35%) full-width brick or stone (not including window and door areas and related trim areas), with the balance being any type of lap siding and/or stucco.
 - b) At least thirty percent (30%) full-width brick or stone, with the balance being stucco and/or a “cementitious” lap siding. (A “cementitious” lap siding product is defined as a manufactured strip siding composed of cement-based materials rather than wood fiber-based or plastic-based materials. For example, Masonite or vinyl lap siding would not be allowed under this option.).
 - c) All textured stucco, provided there are unique design features such as recessed garages, tile or metal roofs, arched windows etc. in the elevations of the buildings or the buildings are all brick stucco. Unique design features shall be reviewed by the Community Development Director for compliance.

B. Commercial Design

1. The City of Leesburg has recently adopted Architectural Standards under Ordinance 16-35. These standards, as amended, shall govern the design of all structures within the commercial and government/institutional areas.

C. Design Variations

1. Other similar design variations meeting the intent of this section may be approved by the Community Development Director or designee.

6. LANDSCAPING AND BUFFER REQUIREMENTS

- A. Except as otherwise provided herein, a minimum twenty-five (25) foot landscape buffer, as shown on the attached Conceptual Site Plan (Exhibit C) shall be provided along the all boundaries (south, west and east) of the property. The northern boundaries of Pods 10,

12, 13, 14, 15 and 19 and the western boundary of Pod 15 shall be exempt from the landscape buffer. The northern boundary of Pod 5 and eastern boundary of Pods 7 and 10 shall be exempt from this buffer requirement and remain in an undisturbed condition except as noted in 6.B. below.

- B. In order to shield, both visually and physically, the property currently described as Alt Key #1702593 from any negative impacts associated with abutting uses, a minimum fifty (50) foot buffer shall be provided along the eastern boundary of Pods 7 and 10 and along the northern boundary of Pod 5 (Exhibit D). The buffer shall be completely opaque from the ground up to a minimum height of six (6) feet in the areas along the perimeter of said buffer. The balance of the buffer width will be a combination of planted and natural vegetation as shown in Exhibit D. The buffer shall not be considered to be part of the abutting residential lot, nor shall buffer be used a part of the required recreation area or drainage system for the property. The perimeter of the buffer may utilize a masonry wall, vinyl fence or planted hedge or any combination thereof which maintains a completely opaque buffer. The buffer must be at least three (3) feet in height at installation capable of attaining full height and opacity within twenty-four (24) months thereafter. No roads may be constructed adjacent to the buffer.
- C. Land uses allowed within the upland buffers are limited to overlooks, boardwalks, hiking trails, walkways, passive recreation activities and stormwater facilities as permitted by St. Johns River Water Management District, except that such uses shall not be allowed in the buffer described in 6.B. above.
- D. An upland buffer shall be placed along Haines Creek as required by the City of Leesburg, Florida Department of Environmental Protection, St. Johns River Water Management District and/or U.S. Army Corp of Engineers, whichever is more restrictive.
- E. All other property shall meet all landscaping and buffering requirements in accordance with regulations contained within the City of Leesburg Code of Ordinances, and at a minimum shall contain the following plantings as noted in Figures A and B below:

Figure A

Canopy Trees (per 100 l.f.)	2 per 100 linear ft
Tree CAL/Height	2" cal, 12' overall height
Optional Ornamental Trees (per 100 l.f.)	3 per 100 linear ft
Tree CAL/Height	2" cal, 7' overall height
Shrub Screen (per 100 l.f.)	
Square Ft. of Shrubs	(33) 3 gal plants, 18"—24" minimum at installation (depending on species); hedges to be 36"—42" high by thirty-six (36) inches wide hedge or continuous landscape screen with a ninety (90) percent opacity within one (1) year of planting
Container size	3 gal

Figure B



- C. Variations to the landscape requirements of the code may be approved by the Community Development Director or designee, as long as the intent of the PUD and the Landscaping Code are maintained, including consideration of existing fencing on adjacent properties and existing natural vegetative buffers.

7. **SITE ACCESS**

- A. Main access to the property from County Road 44 will be the one boulevard type (divided landscaped roadway) as shown on the conceptual plan, and as approved through the City of Leesburg development and permitting processes. Any additional access shall be subject to the City of Leesburg, Florida Department of Transportation and Lake County permitting and review processes.
- B. All internal or external access points for the development are subject to review and approval by the appropriate permitting agency, including FDOT, Lake-Sumter Metropolitan Planning Organization, Lake County and the City of Leesburg as applicable.
- C. Each internal access along the main entry road as shown on the Conceptual plan attached hereto shall provide a decorative entry feature to include a concrete, brick or stucco wall, fencing or signage at least five (5) feet in height, on each side of the entryway. This feature may be used for signage per City of Leesburg Code of Ordinances, as amended.
- D. Subject to approval by the City and/or Lake County, Pod 5 may access Hickory Hollow Road. No other portion of the property may access Hickory Hollow Road. Prior to any portion of Pod 5 accessing Hickory Hollow Road, the Permittee shall at a minimum: (1) be required to obtain all appropriate connection permits and approvals from the City and/or Lake County; (2) cause Hickory Hollow Road to be improved to City or County standards for a public road; and (3) cause Hickory Hollow Road to be dedicated to the City or County for use as a public road.

8. **TRANSPORTATION IMPROVEMENTS**

- A. All future transportation improvements requirements shall be based on a current traffic analysis and shall be contingent upon Site Plan approval of the project site by City staff during the development review and permitting process. All required transportation improvements shall comply with all regulations and permitting requirements of the City

of Leesburg, Lake County, Lake-Sumter MPO and/or the Florida Department of Transportation as applicable. Said improvements will be the responsibility of the Permittee

- B. Any right-of-way that may be required shall be based on projected needs and shall be contingent upon site plan approval by City staff during the development review and permitting process.
- C. The Permittee shall provide all necessary improvements/signalization within and adjacent to the development as required by Lake County, the Lake-Sumter MPO and City of Leesburg.
- D. All roads within the development shall be designed and constructed to meet the City of Leesburg requirements.
- E. The Permittee shall be responsible for obtaining all necessary Lake County permits and a copy of all permits shall be provided to the City of Leesburg.
- F. The City of Leesburg will not be responsible for the maintenance or repair of any of the roads or transportation improvements. The Permittee shall establish an appropriate legal entity that will be responsible to pay the cost and perform the services to maintain the roads and transportation improvements. However, should the Permittee desire to dedicate the proposed project's internal road system to the City of Leesburg; the City, at its discretion, may accept or not accept the road system. Prior to acceptance, the Permittee shall demonstrate to the City that the road system is in suitable condition and meets City of Leesburg requirements. As a condition of accepting the roadway system the City may create a special taxing district or make other lawful provisions to assess the cost of maintenance of the system to the residents of the project, and may require bonds or other financial assurance of maintenance for some period of time.

9. STORMWATER MANAGEMENT/UTILITIES

- A. Prior to receiving final development approval for each phase, the Permittee shall submit a stormwater management plan and utility plan acceptable to the City of Leesburg. Prior to any clearing, grubbing, or disturbance of natural vegetation in any phase of the development, the Permittee shall provide:
 - 1. A detailed site plan that demonstrates no direct discharge of stormwater runoff generated by the development into any wetlands or onto adjacent properties.
 - 2. A stormwater management system designed and implemented to meet all applicable St. Johns River Water Management District and City of Leesburg requirements.
 - 3. A responsible legal entity for the maintenance of the stormwater management system on the plat prior to the approval of the final plat of record. A homeowners or property owners association is an acceptable maintenance entity.
 - 4. The 100-year flood plain shown on all plans and lots.
 - 5. The appropriate documentation that any flood hazard boundary has been amended in accordance with Federal Emergency Management Agency requirements, if the 100 year flood plain is altered and /or a new 100 year flood elevation is established in reference to the applicable flood insurance rate map.
 - 6. A copy of the Management and Storage of Surface Waters permit obtained from St. Johns River Water Management District shall be provided to the City during the site plan review process.

7. Should the Permittee desire to dedicate the proposed project's stormwater management system to the City of Leesburg; the City, at its discretion, may accept or not accept the stormwater management system. Prior to acceptance, the Permittee shall demonstrate to the City the stormwater management system is in a suitable condition and meets City of Leesburg and St. Johns River Water Management District requirements. As a condition of accepting the system the City may create a special taxing district or make other lawful provisions to assess the cost of maintenance of the system to the residents of the project.
- B. The drainage system shall be designed to prevent runoff or other drainage from flowing from any portion of the property to the abutting property described as Alt Key #1702593.

10. WETLANDS AND FLOOD ZONES

- A. All wetlands on the project site shall be identified by a jurisdictional wetland boundary line, and the location and extent of each wetland shall be determined by the Department of Environmental Protection, St. Johns River Water Management District and/or U.S. Army Corp of Engineers. Each wetland shall be placed on a suitable map, signed and sealed by a surveyor registered to practice in Florida and shall be submitted as part of the preliminary plat application. Any notice of violation from any affected agency shall be cause for a cease and desist order on permits issued by the City of Leesburg until such time as the violation has been resolved with the appropriate agency(s).
- B. Buildings or structures shall be a minimum of 50 feet from any wetland jurisdiction boundary.
- C. Wetlands shall have a minimum upland buffer as established by the Department of Environmental Protection, St. Johns River Water Management District and/or U.S. Army Corp of Engineers; whichever is more restrictive. All upland buffers shall be naturally vegetated and upland buffers that are devoid of natural vegetation shall be re-planted with native vegetation or as required by St. Johns River Water Management District and/or U.S. Army Corp of Engineers.
- D. Land uses allowed within the upland buffers for wetlands are limited to stormwater facilities as permitted by St. Johns River Water Management District.
- E. If wetland alteration is permitted by St. Johns River Water Management District and/or U.S. Army Corp of Engineers, wetland mitigation shall be required in accordance with permit approvals from St. Johns River Water Management District or U.S. Army Corp of Engineers, whichever is more restrictive.
- F. A wildlife management plan for the project site shall be prepared based on the results of an environmental assessment of the site and any environmental permit required from applicable governmental agencies. The wildlife management plan shall be submitted to the City as part of the site plan application process.
- G. A map indicating the location of the 100-year flood plain.
- H. The appropriate documentation that any flood hazard boundary has been amended in accordance with Federal Emergency Management Agency requirements, if the 100 year flood plain is altered and/or a new 100 year flood elevation is established in reference to the applicable flood insurance rate map.

11. DRAINAGE AND UTILITIES

- A. Prior to receiving Final Development Plan Approval, the "Permittee" shall submit, if applicable, a Master Site Drainage Plan and Utility Implementation Plan acceptable to the City of Leesburg. Prior to removal, renovation or demolition of any existing development on the site, the permittee shall provide:
- 1) A detailed site plan demonstrating no direct discharge of stormwater runoff generated by the development into any natural surface waters or onto adjacent properties shall be required.
 - 2) A detailed site plan indicating all provisions for electric, water, sewer, and natural gas in accordance with the site plan review process as required by the City of Leesburg Code of Ordinances.
 - 3) The City of Leesburg intends to service the property with water and wastewater services at this time. At the time of connection, all regulations in place at the time of the request shall be required, including but not limited to impact fees, connection and utility service deposit charges. The cost of supplying all water and wastewater lines and other necessary infrastructure such as lift stations to the development shall be the responsibility of the developer or property owner.

12. MAINTENANCE

- A. With the exception of any public utilities, streets and sidewalks, maintenance of all site improvements, including but not limited to roadways, drives, internal sidewalks, landscaping and stormwater retention/drainage shall be the responsibility of the property owner. A property owners' association shall serve as an appropriate entity for all common properties within the development.

13. DEVELOPMENT PHASING

- A. The proposed project may be constructed in phases in accordance with the Planned Unit Development Conditions and Conceptual Plan. Each phase may be subdivided in to multiple sub-phases as needed by the Permittee. Changes to the development conditions or conceptual plan, other than those conditions described in this agreement, shall be revised in accordance with the Planned Development review process.
- B. As the project may be constructed in multiple phases, each phase shall have infrastructure necessary to support and serve that phase.
- ~~C. Implementation of the project shall commence within 48 months of approval of this PUD (Planned Unit Development). In the event that the conditions of the PUD have not been substantially implemented during the required time period, the PUD shall be scheduled with due notice for reconsideration by the Planning Commission at their next available regular meeting. The Planning Commission will consider whether to extend the PUD approval or rezone the property to another appropriate zoning classification.~~

14. MISCELLANEOUS CONDITIONS

- A. The uses of the proposed project shall only be those uses identified in the approved Planned Unit Development Conditions. Any other proposed use must be specifically authorized in accordance with the Planned Development amendment process.
- B. There shall be no changes to the buffering requirements as set forth in paragraph 6.B. above, nor shall a change to the Conceptual Plan or other Planned Unit Development Conditions be allowed which would affect the property currently described as Alt Key #1702593, unless such change is approved by the City Commission no sooner than ten (10) days after notice of such proposed variation has been mailed to the record owner of the property currently described as Alt Key #1702593. All other changes to either the Conceptual Plan or the Planned Unit Development Conditions shall be processed in accordance with the Planned Development review process.
- C. No person, firm or corporation shall erect, construct, enlarge, alter, repair, remove, improve, move, convert, or demolish any building structure, or alter the land in any manner without first submitting the necessary plans and obtaining appropriate approvals in accordance with the City of Leesburg Codes.
- D. Construction and operation of the proposed use(s) shall at all times comply with the Planned Unit Development conditions set forth herein, and with all City and other governmental agencies rules and regulations.
- E. The transfer of ownership or lease of any or all of the property described in this PUD Agreement shall include in the transfer or lease agreement, a provision that the purchaser or lessee is made good and aware of the conditions pertaining to the Planned Unit Development established and agrees to be bound by these conditions. The purchaser or lessee may request a change from the existing plans and conditions by following the procedures as described in the City of Leesburg Land Development Code, as amended.
- F. These PUD Conditions shall inure to the benefit of, and shall constitute a covenant running with the land and the terms, conditions, and provisions hereof, and shall be binding upon the present owner and any successor, and shall be subject to each and every condition as set forth herein.
- G. A wildlife management plan for the project site shall be prepared based on the results of the environmental permit approvals obtained from applicable governmental agencies.
- H. All operations shall be carried on entirely within an enclosed structure, except as permitted under accessory uses of Section 25-284, City of Leesburg Code of Ordinances, as amended.

15. LEVELS OF SERVICE

A. Levels of Service

- 1. As submitted the proposed zoning change, when developed, will result in demands on public facilities which would exceed the current capacity of some public facilities, such as, but not limited to water, wastewater, roads, drainage, and solid waste. However, no final development order (site plan and building permits) shall be granted for proposed development until there is a finding that all public facilities and services required for the development have sufficient capacity at or above the adopted level of service (LOS) to accommodate the impacts of the development, or that improvements

necessary to bring facilities up to their adopted LOS will be in place concurrent with the impacts of the development.

B. Utilities

1. Projected Capacities

- a. The City's utility planning efforts draw upon phasing, capacity and service requirements, based upon information provided by the applicant. The City develops its plans consistent with sound engineering principles, prudent fiscal practices and due regard for regulatory compliance.
- b. If the development requires construction of new distribution or collection lines, the developer will be required to construct such facilities to provide service. The developer will bear the cost of design, permitting and construction. Any such facilities must be constructed in a fashion consistent with the City's master plans and to the City standards and specifications.

2. Commitment of Capacity

There are no previous commitments of any existing or planned excess capacity.

3. Ability to Provide Services

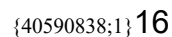
At this time, the City intends to provide water, wastewater and reclaimed water service to this development.

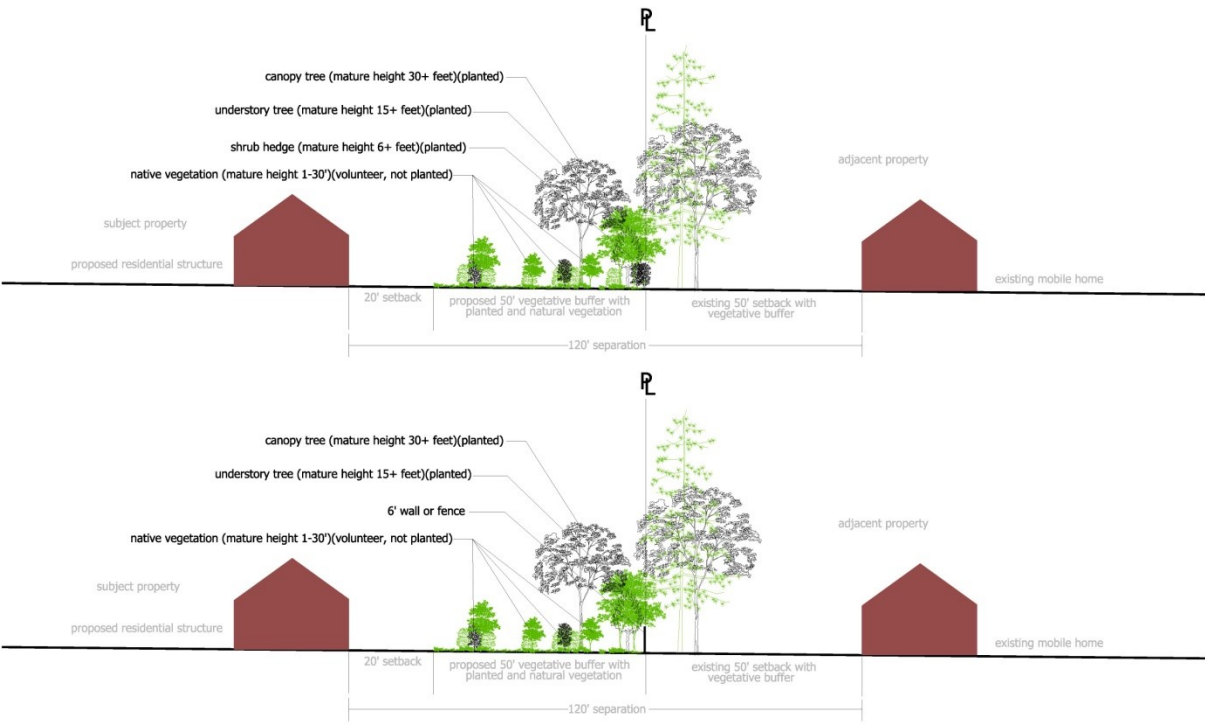
Legal Description

LEGAL DESCRIPTION:

BEGIN AT THE SOUTHEAST CORNER OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 3, TOWNSHIP 19 SOUTH, RANGE 25, EAST, LAKE COUNTY, FLORIDA, AND RUN THENCE WESTERLY ALONG THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 TO A POINT ON THE EASTERLY LINE OF LANDS DESCRIBED IN O.R. BOOK 1121, PAGE 272, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA; THENCE NORTHWESTERLY ALONG SAID EASTERLY LINE OF LANDS DESCRIBED IN O.R. BOOK 1121, PAGE 272 AND NORTHWESTERLY ALONG THE EASTERLY LINE OF LANDS DESCRIBED IN O.R. BOOK 3572, PAGE 1805, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA TO A POINT ON THE SOUTH LINE OF THE NORTHWEST 1/4 OF SECTION 3, TOWNSHIP 19 SOUTH, RANGE 25, EAST, LAKE COUNTY, FLORIDA; THENCE WESTERLY ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 3, TO THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 3; THENCE NORTHERLY ALONG THE WEST LINE OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 TO A POINT ON THE SOUTH LINE OF THE NORTH 815 FEET OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 3; THENCE WESTERLY ALONG THE SOUTH LINE OF THE NORTH 815 FEET OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 TO THE SOUTHWEST CORNER OF THE NORTH 815 FEET OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 3; THENCE NORTHERLY ALONG THE WEST LINE OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 TO THE NORTHWEST CORNER OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 3; THENCE WESTERLY ALONG THE SOUTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 3, TO THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF THE NORTHWEST OF SAID SECTION 3; THENCE NORTHERLY ALONG THE WEST LINE OF THE NORTHWEST 1/4 TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE ABANDONED RAILROAD; THENCE WESTERLY ALONG THE SOUTHERLY RIGHT OF WAY LINE OF THE ABANDONED RAILROAD TO A POINT ON THE WEST LINE OF THE EAST 850 FEET OF THE NORTHEAST 1/4 OF SECTION 4, TOWNSHIP 19 SOUTH, RANGE 25, EAST, LAKE COUNTY, FLORIDA; THENCE NORTHERLY ALONG THE WEST LINE OF THE EAST 850 FEET OF THE NORTHEAST 1/4 OF SAID SECTION 4, TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 33, TOWNSHIP 18 SOUTH, RANGE 25 EAST, LAKE COUNTY, FLORIDA; THENCE WESTERLY ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 33 TO A POINT ON THE EAST LINE OF THE LANDS DESCRIBED IN O.R. BOOK 1639, PAGE 1032, PUBLIC RECORDS OF LAKE COUNTY, FLORIDA; THENCE NORTHERLY, WESTERLY, NORTHWESTERLY, WESTERLY AND NORTHERLY ALONG THE EASTERLY LINE OF SAID LANDS DESCRIBED IN O.R. BOOK 1639, PAGE 1032 TO A POINT ON THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 33; THENCE WESTERLY ALONG THE SOUTH LINE OF THE NORTHEAST TO THE SOUTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 33; THENCE NORTHERLY ALONG THE WEST LINE OF THE NORTHEAST 1/4 TO THE NORTHWEST CORNER OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 33; THENCE EASTERLY ALONG THE NORTH LINE OF THE SOUTH 1/2 OF THE NORTHEAST 1/4 TO A POINT ON THE SOUTHERLY BANKS OF THE OKLAWAHA RIVER (ALSO KNOWN AS HAINES CREEK); THENCE SOUTHEASTERLY AND EASTERLY ALONG AND WITH THE SOUTHERLY BANKS OF THE OKLAWAHA RIVER (ALSO KNOWN AS HAINES CREEK) TO A POINT ON THE EAST LINE OF THE WEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 34, TOWNSHIP 18 SOUTH, RANGE 25 EAST, LAKE COUNTY, FLORIDA; THENCE SOUTHERLY ALONG THE EAST LINE OF THE WEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 34, TO THE SOUTHEAST CORNER OF THE WEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 34, SAID POINT ALSO BEING THE NORTHEAST CORNER OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 3, TOWNSHIP 19 SOUTH, RANGE 25 EAST, LAKE COUNTY, FLORIDA; THENCE SOUTHERLY ALONG THE EAST LINE OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 3, TO THE SOUTHEAST CORNER OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 3; THENCE EASTERLY ALONG THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 TO THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 3; THENCE SOUTHERLY ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 TO THE NORTHEAST CORNER OF THE SOUTH 198 FEET OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 3; THENCE WESTERLY ALONG THE NORTH LINE OF THE SOUTH 198 FEET OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 TO A POINT ON THE WEST LINE OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 3; THENCE SOUTHERLY ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 TO THE SOUTHWEST CORNER OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 3; THENCE EASTERLY ALONG SOUTH LINE OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 TO A POINT ON THE EAST LINE OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 3; THENCE SOUTHERLY ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 TO THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 3, SAID POINT ALSO BEING ON THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 3; THENCE EASTERLY ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 TO THE NORTHEAST CORNER OF THE SOUTHEAST 1/4; THENCE SOUTHERLY ALONG THE EAST LINE OF THE SOUTHEAST 1/4 TO THE POINT OF BEGINNING.

LESS ROAD RIGHT OF WAYS.





City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.A.7.

Meeting Date: May 24, 2021

From: Al Minner, (City Manager)

Subject: An Ordinance of the City of Leesburg, Florida, amending Chapter 17, Pensions and Retirement, Article IV, Police Officers' Retirement Fund, of the Code of Ordinances of the City of Leesburg; amending Section 1, Definitions; providing for codification; providing for severability of provisions; repealing all Ordinances in conflict herewith; and providing an effective date.

Staff Recommendation:

Approve the City Ordinance amending the City of Leesburg Municipal Police Officers' Retirement Fund, amending Chapter 17, Section 1, Definitions, to amend the definition of Salary.

Analysis:

The actuary for the Police Pension fund believes that the definition of special duty pay in the CBA should make all special pay a pensionable benefit. However, the City has not withdrawn the members' 7.65% contribution for non-City related special duty pay. This modification to the CBA will make all special pay pensionable and require an employee contribution. The modification should ever so slightly benefit the City.

Procurement Analysis:

N/A

Options:

1. Approve the Ordinance as presented; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

Submission Date and Time:

ORDINANCE NO. 21-_____

**AN ORDINANCE OF THE CITY OF LEESBURG,
AMENDING CHAPTER 17, PENSIONS AND RETIREMENT,
ARTICLE IV, POLICE OFFICERS' RETIREMENT FUND, OF
THE CODE OF ORDINANCES OF THE CITY OF
LEESBURG; AMENDING SECTION 1, DEFINITIONS;
PROVIDING FOR CODIFICATION; PROVIDING FOR
SEVERABILITY OF PROVISIONS; REPEALING ALL
ORDINANCES IN CONFLICT HERewith AND PROVIDING
AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA;**

SECTION 1: That Chapter 17, Pensions and Retirement, Article IV, Police Officers' Retirement Fund, of the Code of Ordinances of the City of Leesburg, is hereby amended by amending Section 1, Definitions, to amend the definition of Salary, to read as follows:

* * * * *

Salary means the total compensation for services rendered to the City as a Police Officer reportable on the Member's W-2 form, less Christmas bonuses and uniform allowances, and excluding any payments for extra duty or special detail work performed on behalf of a second party employer on or after October 1, 2017 and prior to July 1, 2021, but including payments for extra duty or special detail work performed on behalf of a second party employer on and after July 1, 2021, any lump sum payment for accrued annual leave, accrued sick leave, accrued compensatory leave or paid time off, plus all tax deferred, tax sheltered or tax exempt items of income derived from elective employee payroll deductions or Salary reductions. For service earned after January 22, 2013 (the "effective date"), Salary shall not include more than three hundred (300) hours of overtime per calendar year and shall also not include payments for accrued unused sick or annual leave. Provided however, in any event, payments for overtime in excess of three hundred (300) hours per year or accrued unused sick or annual leave accrued as of the effective date and attributable to service earned prior to the effective date, may still be included in Salary for pension purposes even if the payment is not actually made until on or after the effective date. In any event, with respect to unused sick leave and unused annual leave accrued prior to the effective date, Salary will include the lesser of the amount of sick or annual leave time accrued on the effective date or the actual amount of sick or annual leave time for which the retiree receives payment at the time of retirement, regardless of whether the amount of sick or annual leave was, at some time prior to retirement, reduced below the amount on the effective date.

Compensation in excess of the limitations set forth in Section 401(a)(17) of the Code as of the first day of the Plan Year shall be disregarded for any purpose, including employee contributions or any benefit calculations. The annual compensation of each member taken into account in determining benefits or employee contributions for any Plan Year beginning on or after January 1, 2002, may not exceed \$200,000, as adjusted for cost-of-living increases in accordance with Code Section 401(a)(17)(B). Compensation means compensation during the fiscal year. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. If the determination period consists of fewer than 12 months, the annual compensation limit is an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is 12. If the compensation for any prior determination period is taken into account in determining a Member's contributions or benefits for the current Plan Year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. The limitation on compensation for an "eligible employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a Member before the first Plan Year beginning after December 31, 1995.

SECTION 2: Specific authority is hereby granted to codify and incorporate this Ordinance in the existing Code of Ordinances of the City of Leesburg.

SECTION 3: All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4: If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 5: That this Ordinance shall be effective upon adoption.

PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COMMISSION
OF THE CITY OF LEESBURG, FLORIDA, HELD ON THE ____ DAY OF _____, 2021.

Mayor-Commissioner, John Christian

ATTEST:

City Clerk